S. HRG. 98-722

PROTECTION OF HISTORIC SHIPWRECKS, AND THE NATIONAL MARITIME MUSEUM

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1504

A BILL TO PROVIDE FOR PROTECTION OF HISTORIC SHIPWRECKS, STRUCTURES, AND ARTIFACTS LOCATED ON A SEABED OR IN THE SUBSOIL OF THE LANDS BENEATH WATERS OF THE UNITED STATES

S. 1647

A BILL TO AUTHORIZE THE USE OF FUNDS FROM RENTAL OF FLOATING DRYDOCK AND OTHER MARINE EQUIPMENT TO SUPPORT THE NATIONAL MARITIME MUSEUM IN SAN FRANCISCO, CALIFORNIA

OCTOBER 21, 1983

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PROTECTION OF HISTORIC SHIPWRECKS, AND THE NATIONAL MARITIME MUSEUM

FRIDAY, OCTOBER 21, 1983

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room SD-366, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop and Hecht.

Also present: Tony Bevinetto, professional staff member, and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good morning. Today the Subcommittee on Public Lands and Reserved Water will hear testimony on two bills that bring us from the high mountains and the plains of my home State of Wyoming to the edge of the sea and beyond.

The first bill contains the stuff that dreams are made of. Legends surround the facts of treasure-laden ships sunk by storm or battle in the seas off our coasts.

S. 1504 provides for protection of historic shipwrecks, structures, and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States and this addresses a system of preservation by States or the Federal Government of these ships and structures.

S. 1647, to authorize the use of funds from rental or floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, Calif., addresses a method for funding the repair of several vessels at the National Maritime Museum in San Francisco.

Without objection, I will place both bills in the hearing record and ask the witnesses if they will indulge us by summarizing their statements in their oral testimony. The hearing record will remain open for 2 weeks. Their entire statements will also be placed in the record as they appear.

[The texts of S. 1504 and S. 1647 follow:]

II

98TH CONGRESS
1ST SESSION

S. 1504

To provide for protection of historic shipwrecks, structures, and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 1983

Mr. BENTSEN (for himself and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for protection of historic shipwrecks, structures, and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds that—

(1) historical shipwrecks, structures, and artifacts on the seabed and in the subsoil of the lands beneath waters of the United States are cultural resources that are an irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal law creates a barrier to adequate protection from the loss and destruction of these resources resulting from uncontrolled salvage operations;

(4) some of the States have laws which would adequately protect these resources, but for the barrier created by existing Federal law; and

(5) the power to prescribe rules of law to be applied to such resources should rest with the respective States.

(b) The principal purpose of this Act is to protect, for the present and future benefit of the American people, historical shipwrecks, structures, and artifacts on the seabed and in the subsoil of the lands beneath navigable waters within the boundaries of the respective States.

SEC. 2. For the purposes of this Act—

(1) the term "historical shipwrecks, structures, and artifacts" includes sunken and abandoned ships and wrecks of the sea and any part of the cargo and other contents of such ships and wrecks, and sites, structures (including wharfs and bridges), objects, buildings, artifacts, and implements of historical archeological, scientific, or educational interest on the seabed or in the subsoil of the lands beneath navigable

waters and which are eligible for or are listed on the National Register of Historic Places;

(2) the term "salvage" means the compensation or reward allowed by maritime law to persons by whose voluntary assistance a ship or wreck at sea or her cargo have been saved or recovered in whole or in part from marine peril;

(3) the term "lands beneath navigable waters" has the meaning given such term in section 2(a) of the Submerged Lands Act (67 Stat. 29; 43 U.S.C. 1301(a)), and includes the beds and subsoil of all navigable lakes, reservoirs, rivers and streams, except those excluded by section 2(f) of such Act (43 U.S.C. 1301(f));

(4) the term "boundaries" has the meaning given that term in section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)); and

(5) the term "State" means a State of the United States.

SEC. 3. Except as otherwise reserved in section 5, the United States releases and relinquishes to the respective States all right, title, and interest, if any it has, in historical shipwrecks, structures, and artifacts on the seabed or in the subsoil of the lands beneath navigable waters within the boundaries of the respective States.

SEC. 4. (a) The United States maritime law of salvage shall not apply to any historical shipwrecks, structures, and artifacts located on the seabed or in the subsoil of the lands beneath navigable waters within the boundaries of the respective States or other waters of the United States.

(b) All historical shipwrecks, structures, and artifacts located on the seabed or in the subsoil of the lands beneath navigable waters of each State shall be subject to the laws of such State.

SEC. 5. Except as provided for in this Act, nothing in this Act is to be construed as affecting or amending any of the rights reserved by the United States in—

(1) sections 3, 4, 5, 6, and 8 of the Submerged Lands Act (43 U.S.C. 1311–1315);

(2) sections 4238 through 4241 of the Revised Statutes (46 U.S.C. 721–724), the Act entitled "An Act to aid vessels wrecked or disabled in waters coterminous to the United States and the Dominion of Canada", approved June 19, 1878 (20 Stat. 175; 46 U.S.C. 725), the Act entitled "A Joint Resolution for the reporting, marking, and removal of derelicts", approved October 31, 1893 (28 Stat. 13; 46 U.S.C. 726), the Act entitled "An Act to harmonize the national law of salvage with the provisions of the international convention for the unification of certain rules

with respect to assistance and salvage at sea, and for other purposes", approved August 1, 1912 (37 Stat. 242; 46 U.S.C. 727–731), and the Act entitled "An Act to promote safety at sea in the neighborhood of ice and derelicts, and for other purposes", approved June 25, 1936 (49 Stat. 1922; 46 U.S.C. 738–738d); and

(3) sections 7361–7367 of title 10, United States Code.

SEC. 6. Nothing in this Act shall be construed to preempt or modify the laws relating to the ownership and control of ground and surface waters of the States which lie wholly or in part westward of the ninety-eighth meridian.

SEC. 7. Historical shipwrecks, structures, and artifacts beneath waters of the United States not subject to State control pursuant to section 3 or 6 is subject to the supervision and control of the Department of the Interior.

II

98TH CONGRESS
1ST SESSION

S. 1647

To authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, California.

IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JULY 18), 1983

Mr. CRANSTON (for himself and Mr. WILSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 4 of the Act entitled "An Act to establish the Golden Gate National Recreation Area in the State of California, and for other purposes", approved October 27, 1972 (Public Law 92–589; 16 U.S.C. 460bb–3 (f)) is amended to read as follows:

"(f) Notwithstanding any provisions of law, in the administration of those parcels known as Haslett Warehouse, Cliff House Properties, and Louis' Restaurant and the

AFDL–38 Drydock vessel and other heavy marine equipment located in San Francisco, California, the Secretary shall credit any proceeds from the rental of space in such parcels, and rental of such vessel and other heavy marine equipment, to the appropriation for the maintenance, repair, and related expenses of the vessels which are part of the National Maritime Museum in San Francisco, California. Surplus funds, if any, shall be deposited in the Treasury of the United States.".

Senator WALLOP. The Senator from Texas is not here yet. We will ask him to come to the table directly when he comes. In order to go on, I will ask Mr. Jerry L. Rogers, Associate Director for Cultural Resources, National Park Service, Department of the Interior, to give his testimony first.

STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR FOR CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. ROGERS. Thank you, Mr. Chairman. I appreciate your indulging our need this morning to deal with both bills as quickly as possible. It is very kind of you.

My statement, as it turns out, is extremely brief. If you don't object, I would like to simply read it.

Senator WALLOP. You may proceed. Yes, by all means.

Mr. ROGERS. S. 1504 releases to the several States any claims of ownership and any right to administer historic shipwrecks by the Federal Government within the navigable water of a State; it makes inapplicable the U.S. maritime law of salvage to any historic shipwrecks, and it establishes supervision and control over historic shipwrecks in the U.S. waters outside State boundaries in the Department of the Interior.

The effect of S. 1504, therefore, is to permit the several States to protect historic shipwrecks that are found within their boundaries. Outside State boundaries, that is, generally seaward from 3 miles of the coastline, the bill purports to grant the Department of the Interior authority to exercise supervision and control over historic shipwrecks.

We have been advised by the Department of State that under international law, such authority would be limited to U.S. nationals and only with respect to shipwrecks of U.S. origin.

We recommend the enactment of S. 1504. We believe that the bill will provide a mechanism for the urgently needed protection of the Nation's sunken historic shipwrecks.

In addition, we recommend a number of modifications to maintain consistency with other preservation statutes and agency responsibilities.

First, we recommend that the definition of the term "State" be amended to include, in addition to the several States of the union, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa.

The bill, as printed, only releases ownership and jurisdiction to the 50 States of the Union, leaving unsettled the law applicable to historic shipwrecks found in the waters of; for example, the Virgin Islands and Puerto Rico.

The Federal Government has generally given its territories and possessions the right to deal with property within their boundaries and we believe historic shipwrecks should be no exception.

Second, we recommend that the language be added to section 3, that is, specifically exempting from release and relinquishment to the States the ownership and management of submerged resources located on land or in waters presently under the control of Federal

agencies or sovereignties such as submerged ships within units of the National Park System. Within Isle Royale National Park, Mich.; for example, are several sunken ships that are of great archeological value that should continue to be studied and preserved by the National Park Service.

Similarly, an historic shipwreck within Biscayne National Park has been recently held by a Federal court to be under the control and protection of the National Park Service. These resources are important components of the National Park System and should be retained.

Third, we recommend that language be added to section 7, specifically exempting from control by this Department submerged resources that are presently under the control of or claimed by other Federal agencies, such as submerged Civil War vessels claimed or controlled by the Department of the Navy. We recommend that the bill recognize the exemption for the U.S.S. *Monitor* and any other historic shipwrecks that are protected by the Department of Commerce under title III of the Maritime Protection, Research, and Sanctuaries Act.

Fourth, as a technical amendment, we believe that section 1(b) should also refer to waters within the boundaries of the United States to be consistent with section 4(a).

Mr. Chairman, we note one major problem with the definition of historic shipwreck contained in S. 1504, as property which would meet the criteria for eligibility on the National Register of Historic Places. Because meeting the eligibility requirements for formal listing on the National Register could be unduly onerous and burdensome to both the public and to the States, we recommend that the definition be modified to delete this requirement and further recommend that a 50-year age requirement be substituted.

With regard to addressing abandoned historic shipwrecks on the seaboard beyond the territorial sea, we defer to the Departments of State and Justice concerning the legalities of our jurisdiction for cultural resources.

To the extent that we have jurisdiction, the bill would clearly place responsibility for historic shipwrecks outside the 3-mile limit in this Department.

Currently, the Minerals Management Service of this Department has jurisdiction over the natural resources of the subsoil of the seabed, seaward of the 3 mile limit and administers the oil and gas development program on the Outer Continental Shelf.

Prior to the 1976 Treasure Salvors ruling, the National Park Service issued antiquities permits for archeological work at submerged resources on these lands, then under the jurisdiction of the Bureau of Land Management.

We, therefore, recommend the enactment of S. 1504, if amended as we have suggested.

Mr. Chairman, this concludes my prepared statement. I'd be pleased to respond to any questions that you may have at this time.

Senator WALLOP. I only have one. I appreciate the administration's support of this legislation. I wonder what is magic about the 50-year figure.

Mr. ROGERS. I think that is a good question. Fifty years is not a magic figure. Fifty years has been chosen as a general rule in the National Register criteria as a device to assure that we aren't hastily considering something as significant. It takes a bit of time in order to decide whether something has historic value or not. Fifty years has been a part of the National Register criteria now for the last 15 years. It is a figure that Federal agencies and other people that deal with preservation law are accustomed to dealing with. You could choose another period and be equally valid if you wanted.

Senator WALLOP. It just would seem to me that if, by some untoward event, the *New Jersey* went down off the coast it wouldn't take us 50 years to figure that this had historic value. We might be able to determine that rather quickly, Mr. Rogers.

Mr. ROGERS. One might say that is correct, sir. In a case like that, probably one could apply the National Register criteria and could go ahead with a regular nomination to the National Register and cover the situation that way.

Senator WALLOP. I appreciate your testimony. We will certainly look at this as criteria. We could do that without doing violence to the concept that you speak about.

Would you also give your testimony on S. 1647 at this time?

Mr. ROGERS. Thank you, Mr. Chairman.

We appreciate the opportunity to present the views of the Department on S. 1647 to authorize the use of funds from the rental of the floating drydock, AFDL-38, and other heavy equipment to support the historic ship fleet at the Golden Gate National Recreation Area, San Francisco, Calif.

The museum and historic ships were included in the original legislation establishing the Golden Gate NRA which was signed into law in 1972, Public Law 92-589.

The nucleus of the museum was the private San Francisco Maritime Museum collection donated in 1978 and the San Francisco Historic Park vessels donated in 1977. Seven major historic vessels, several requiring major reconstruction, comprise the largest fleet of historic ships in the world. The museum was designated as the National Maritime Museum by Congress in 1978. Current visitation is approximately 500,000 yearly.

The floating drydock, AFDL-38, and other heavy equipment were acquired from the Federal surplus property rolls to provide immediate support for the rehabilitation and for the continuous maintenance of the historic fleet. S. 1647 would direct that the proceeds derived from the rental of the drydock during periods of nonuse by the National Park Service and the rental of other area properties administered by the Secretary be credited to the appropriate appropriation bearing the cost of the administration, maintenance and repair of the historic ships at Golden Gate National Recreation Area. It also provides that any fees collected, surplus to the needs of the fleet, be returned to the Treasury of the United States.

Mr. Chairman, as you know, this administration has consistently opposed the earmarking of revenues for specific projects such as this outside of traditional appropriations and budgetary channels because it undermines the control of the Congress and the President over the expenditure of Federal funds and because it conflicts

with the budget process established by the Congressional Budget and Impoundment Act of 1974.

Although we support the restoration of the National Maritime Museum fleet, we cannot support the enactment of this legislation. Instead, we plan to review alternative means of financing this program, including private donations, direct appropriations and admission fees. This area seems well suited for such fees.

Mr. Chairman, this concludes my statement and I'd be pleased to respond to questions. I thank you for accommodating my needs with regard to time this morning.

Senator WALLOP. Mr. Rogers, have you any idea how much money we are talking about for those vessels?

Mr. ROGERS. It is our general estimate that it would require something on the order of $2.5 million per annum for several years. I am not certain as to what the total figure might come to.

Senator WALLOP. If, somewhere in the Department, there are people who have studied how much it might cost, the committee would appreciate knowing. It would be helpful to know rather more specifically than several years, if that figure is available.

Mr. ROGERS. Yes, sir. We will get you the precise answer to that question.

Senator WALLOP. Thank you very much for appearing here this morning, Mr. Rogers. I understand you need to depart. We appreciate your testimony.

Mr. ROGERS. Thank you kindly, Mr. Chairman.

Senator WALLOP. Senator Bentsen is here. We will be pleased to hear from him.

STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Mr. Chairman, I appreciate the opportunity to testify before your committee this morning on S. 1504.

That is a bill that Senator Tower and I have introduced in trying to protect historical shipwrecks from looting and plundering by those who would measure the value of a historical shipwreck like that solely by the amount of money that they make out of it and the amount of precious metals or the artifacts that they might recover from it.

I think that the members of this subcommittee would certainly agree that many of these shipwrecks are actually repositories of historical information on the development of this country. I believe that our Nation's past is also inextricably tied to the remains of some of these ships that lie beneath the surface of the water and that have been preserved because of the very nature of the area in which they are found.

I think that we have the responsibility to protect those historical shipwrecks and they be preserved and not fall victim to purposeful destruction for a purely profitmaking motive.

I might give you a feel for how many ships are involved in this and how far it goes. Frankly, I didn't realize how many were involved until the staff began to do some research on this.

In my own home State of Texas off that coastline, you have some 1,700 shipwrecks on locations that have been discovered, and 653 of those have been designated as historic landmarks.

Off the coast of North Carolina the State marine archeologic office has recorded over 700 shipwrecks, 500 of them approximately being designated as historic.

Now, in just taking those two examples, you can see that we are talking about a matter of very substantial significance.

I think it would be a loss of tragic proportions if we allowed the historical and cultural wealth of this country to be plundered by a few whose principle motive is profit.

In attempting to address the problems, we have drafted S. 1504 carefully to allow the States to promulgate laws to safeguard shipwrecks that lie within the navigable waters in their boundaries.

Now, provisions has also been made for the Department of the Interior to act as the guardian of shipwrecks and of artifacts lying outside the territorial waters of a State but within the boundaries of the navigable waters of the United States.

We have tried to provide maximum protection for shipwrecks by preserving an important part of our heritage.

I stress that S. 1504 does not undermine or otherwise adversely affect the maritime laws of the United States. Rather, it takes cognizance of a situation where judicial interpretations of maritime law has had a negative impact and endangered part of American historical legacy.

Let me give you an example of the type of thing that would be eliminated by this particular law. Once again, in my home State, the *Espiritu Santo* is a Spanish treasure ship that was lost off Padre Island in 1554. That was a victim of looting by treasure hunters. As a result of the looting of the *Espiritu Santo* and the subsequent treatment of its artifacts, the scientific and historic information was just lost.

Now, that has been described by Dr. Wendorf, who is the chairman of the Texas State Antiquities Committee as a "priceless set of artifacts." It is lost forever to the scientific community and to the people of the United States.

We have similar events to the looting of the *Espiritu Santo* that have occurred in the territorial waters of many other States, Louisiana, North Carolina, and Florida being good examples.

Mr. Chairman, I strongly urge this committee take action on this and we do what has to be done in protecting the historical inheritance of the people of this country.

[The prepared statement of Senator Bentsen follows:]

33-760 O—84——2

STATEMENT BY SENATOR LLOYD BENTSEN
TO THE SUBCOMMITTEE ON PUBLIC LANDS AND
RESERVED WATER OF THE SENATE ENERGY AND NATURAL
RESOURCES COMMITTEE IN REGARD TO LEGISLATION TO
PROTECT HISTORIC SHIPWRECKS
S. 1504

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO SEEK YOUR SUPPORT FOR S. 1504, LEGISLATION WHICH I INTRODUCED TOGETHER WITH SENATOR TOWER. THE PURPOSE OF S. 1504 IS VERY CLEAR AND VERY IMPORTANT: IT IS DESIGNED TO PROTECT HISTORIC SHIPWRECKS FROM DESTRUCTION AND PLUNDERING BY INDIVIDUALS WHO MEASURE A SHIPWRECK'S WORTH SOLELY ON THE BASIS OF THE MONEY OR ARTIFACTS OR PRECIOUS METALS THAT CAN BE SALVAGED FROM IT.

I THINK THE MEMBERS OF THIS SUBCOMMITTEE WOULD AGREE, MR. CHAIRMAN, THAT MANY SHIPWRECKS ARE REPOSITORIES OF HISTORICAL INFORMATION ON THE DEVELOPMENT OF THIS COUNTRY AND WESTERN CIVILIZATION. OUR NATION'S PART IS INEXTRICABLY TIED TO THE REMAINS OF THOSE SHIPS THAT LIE BENEATH THE WATERS WITHIN THE TERRITORIAL BOUNDARIES OF THE UNITED STATES.

THROUGH AN UNDERSTANDING AN APPRECIATION OF OUR PAST AS REVEALED BY THESE SUNKEN SHIPS WE CAN GAIN NEW INSIGHTS INTO OUR CULTURAL HERITAGE. I BELIEVE WE HAVE A RESPONSIBILITY TO ENSURE THAT HISTORICAL SHIPWRECKS THAT CAN BE PRESERVED AND PROTECTED DO NOT FALL VICTIM TO PURPOSEFUL DESTRUCTION FOR A PURELY PROFIT-MAKING MOTIVE.

CURRENTLY, THE UNITED STATES MARITIME LAW OF SALVAGE APPLIES TO THESE HISTORICALLY AND ARCHEOLOGICALLY SIGNIFICANT SHIPWRECKS, RESULTING IN A SITUATION WHERE PROFESSIONAL SALVAGE FIRMS AND TREASURE HUNTERS ARE ABLE TO LOOT OUR TERRITORIAL WATERS OF A WEALTH OF HISTORICAL TREASURE WHICH, IN MY OPINION, SHOULD BE HELD IN THRUST FOR THE PRESENT AND FUTURE GENERATIONS.

COMPOUNDING THIS ALREADY DISTURBING SITUATION IS THE FACT THAT THERE ARE NOT REGULATIONS TO ADEQUATELY GOVERN THE MANNER IN WHICH THESE SALVAGE OPERATIONS MUST BE CARRIED OUT. AS A RESULT IRREPARABLE DAMAGE IS OFTEN DONE TO THE SHIPWRECK SITE ITSELF, ELIMINATING ITS USEFULNESS FOR THE RECREATIONAL SCUBA DIVER OR ACADEMICS WHO MIGHT STILL FIND INTEREST IN THE LOOTED SHIPWRECK. THIS IS TRUE BECAUSE SALVAGERS OFTEN DISTURB THE SILT WHICH COVERS MANY SHIPWRECKS AND WHICH ACTS AS A SHIELD AGAINST THE DESTRUCTIVE FORCES OF THE WATERS.

IT WOULD BE A LOSS OF TRAGIC PROPORTIONS TO ALLOW THE HISTORICAL AND CULTURAL WEALTH OF THIS COUNTRY TO BE PLUNDERED BY A FEW CALLOUS INDIVIDUALS WHOSE ONLY MOTIVE IS PROFIT. IN ATTEMPTING TO ADDRESS THE PROBLEMS WE HAVE DRAFTED S. 1504 CAREFULLY TO ALLOW THE STATE TO PROMULGATE LAWS TO SAFEGUARD SHIPWRECKS LYING BENEATH NAVIGABLE WATERS WITHIN THEIR BOUNDARIES. PROVISION HAS ALSO BEEN MADE FOR THE DEPARTMENT OF INTERIOR TO ACT AS GUARDIAN OF SHIPWRECKS AND ARTIFACTS LYING OUTSIDE THE TERRITORIAL WATERS OF A STATE BUT WITHIN THE BOUNDARIES OF THE NAVIGABLE WATERS OF

THE UNITED STATES.

WE HAVE TRIED TO PROVIDE MAXIMUM PROTECTION FOR SHIPWRECKS WHILE PRESERVING AN IMPORTANT PART OF OUR HERITAGE. I STRESS THAT S. 1504 DOES NOT UNDERMINE OR OTHERWISE ADVERSELY AFFECT THE MARITIME LAWS OF THE UNITED STATES, BUT RATHER TAKES COGNIZANCE OF A SITUATION WHERE JUDICIAL INTERPRETATIONS OF MARITIME LAW HAS HAD A NEGATIVE IMPACT AND ENDANGERED PART OF AMERICAN HISTORICAL LEGACY.

A PERFECT EXAMPLE PROBLEM THAT WOULD BE ELIMINATED BY ADOPTION OF S. 1504 MAY BE SEEN IN MY HOME STATE OF TEXAS. THE ESPIRITU SANTO A SPANISH TREASURE SHIP THAT WAS LOST OFF OF PADRE ISLAND IN 1554 WAS A VICTIM OF LOOTING BY TREASURE HUNTERS. AS A RESULT OF THE LOOTING OF THE ESPIRITU SANTO AND THE SUBSEQUENT TREATMENT OF ITS ARTIFACTS SCIENTIFIC AND HISTORICAL INFORMATION -- DESCRIBED BY FRED WENDORF, CHAIRMAN OF THE TEXAS STATE ANTIQUITIES COMMITTEE, AS "PRICELESS", WAS LOST FOREVER TO THE SCIENTIFIC COMMUNITY AD THE PEOPLE OF THE UNITED STATES. EVENTS SIMILAR TO THE LOOTING OF THE ESPIRITU SANTO HAVE OCCURED IN THE TERRITORIAL WATERS OF OTHER STATES -- LOUISIANA, NORTH CAROLINA AND FLORIDA AMONG THEM.

MR. CHAIRMAN, I URGE THE MEMBERS OF THIS COMMITTEE TO SUPPORT THIS ENDEAVOR TO PRESERVE THIS INVALUABLE HISTORICAL INHERITANCE OF FUTURE GENERATIONS OF UNITED STATES CITIZENS BY ENDORSING S. 1504.

Senator Wallop. Thank you, Senator Bentsen.

Let me just ask, because I don't know, when a ship like the *Espiritu Santo* has been salvaged what is taken from it is taken by several people, one group of people, Senator?

Senator BENTSEN. That's a mixed bag. Sometimes you find one of them that has the kind of equipment to do the job. They find it and they go down and they do a very thorough job. They take everything. They sell it and they get what they can for it.

Senator WALLOP. Yes.

Senator BENTSEN. You've got a situation where we know people of our own country have gone down to foreign countries and bought their artifacts, bought their treasures and brought them back here. Now we pass laws our own selves to protect those countries from that. It is high time that we did the same thing for our own historic treasures.

Senator WALLOP. I thank you very much for this interesting piece of legislation. It appears to have importance. I expect that the subcommittee will work on this rather quickly. We appreciate your presence here this morning. Thank you.

Next is Mr. Peter Tweedt, Acting Director, NOAA. He is accompanied by Dr. Nancy Foster, Chief of Maritime Sanctuaries in NOAA, as well. We welcome you both.

STATEMENT OF PETER TWEEDT, ACTING DIRECTOR, OCEAN AND COASTAL RESOURCE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE: ACCOMPANIED BY DR. NANCY FOSTER, CHIEF, MARITIME SANCTUARIES, OCEAN AND COASTAL RESOURCE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. TWEEDT. Thank you. Mr. Chairman; Senator Hecht, I'll now briefly summarize the remarks that I have submitted and will try not to cover any of the ground that the Department of the Interior representative already covered.

I would simply like to insure that S. 1504 is integrated with the marine sanctuary program which is administered by the Department of Commerce.

I would like to briefly touch on two possible amendments to S. 1504.

Title III of the Marine Protection, Research and Sanctuaries Act of 1972 authorizes the Secretary of Commerce to designate areas as national marine sanctuaries to preserve their conservational, recreational, ecological, or esthetic values. These designated sites may include historic shipwrecks.

Therefore, we recommend that S. 1504 be amended to recognize Commerce's authority under title III to designate nationally significant historic shipwrecks as marine sanctuaries and to permit Commerce to review any shipwreck which meets the bill's definition as an historic shipwreck for possible sanctuary designation. Such an amendment would clarify each agency's responsibility and build upon Commerce's experience in protecting and recovering the U.S.S. *Monitor*.

We expect that only a limited number of historic shipwrecks would merit active management measures under the national marine sanctuary program.

Second, to help to minimize the taxpayers' cost of such management, we would also recommend that the Department of Commerce be authorized to seek and expend private donations for such purposes.

I think the best way to put into focus what we have been doing is to tell you a little bit about the U.S.S. *Monitor*. I am particularly pleased to touch on this project because I believe that much of the success has been since the Reagan administration got to Washington.

We did two things. We put renewed emphasis on the U.S.S. *Monitor*. And we appointed an exceptional person to head the project and head the marine sanctuary program, Dr. Nancy Foster, who is with me. Prior to Dr. Foster assuming leadership of the program, NOAA had participated in two expeditions to the U.S.S. *Monitor* in the midseventies. These expeditions ran a total of 47 days, with 1 day of bad weather, and they recovered artifacts, the largest of which was the ship's lantern. The ship's anchor was not found and we were not even sure it was there.

Two months ago, Dr. Foster led a third expedition to the *Monitor*. She was the onscene commander for a joint undertaking with several universities and the private sector. This expedition ran for 6 days; 3 days were canceled by bad weather. It was in every sense a sea saga. In this expedition, Dr. Foster's divers not only found the *Monitor's* anchor, but also recovered it. It is a very unique one, in that it was developed by the inventor of the *Monitor* John Ericksson. It weighs 1,300 pounds. I'd like to ask Dr. Foster to tell you a little bit more about the *Monitor* and her plans for the ship in the future.

Senator WALLOP. Thank you very much. You may proceed with your remarks, Dr. Foster.

[The prepared statement of Mr. Tweedt follows:]

STATEMEMT
OF
PETER TWEEDT
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

OCTOBER 21, 1983

S. 1504

I am pleased to offer the views of the Department of Commerce on S. 1504, a bill to provide for the protection of historic shipwrecks, structures and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States. Previously I presented the Department's views on a similar bill, H.R. 3194, pending House action.

The Department of Commerce is particularly interested in assuring that the activities authorized by S. 1504 will be integrated with the marine sanctuary program, which authorizes the Department to protect and manage shipwrecks of major national significance. Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 authorizes the Secretary of Commerce to designate areas as national marine sanctuaries to preserve their conservational, recreational, ecological or esthetic values. These designated sites may include historic shipwrecks

and may be located in ocean areas as far seaward as the outer edge of the continental shelf, in state waters where the tide ebbs and flows and in the Great Lakes, if the designation is approved by the given state. The Secretary has already exercised this authority in designating the U.S.S. MONITOR as a national marine sanctuary. In the Department's view, this grant of jurisdictional authority is sufficient to protect and manage those shipwrecks that are of major national historic significance located beyond the territorial sea. We have been advised by the Department of State that the authority granted by the bill to protect historic shipwrecks beyond the territorial waters of the U.S. would, under international law, be limited to actions of U.S. nationals and only with respect to shipwrecks of U.S. origin. Thus, the Federal Government already possesses authority to protect historically important shipwrecks found in United States waters.

We now manage the U.S.S. MONITOR, which lies in 225-230 feet of water, approximately 16 nautical miles off North Carolina. In 1975, the Secretary designated the one square mile area of the ocean in which the MONITOR lies as a national marine sanctuary. Federal law protects the MONITOR by prohibiting any actions which would disturb the ship, although activities which serve research and educational purposes are allowed and controlled through a permit process. Since 1975, there have been three research expeditions to the site. They

have obtained data concerning the structural integrity of the MONITOR and the feasibility of recovery. Several artifacts have been recovered, with the most significant being the 1340 pound four-fluked anchor and five feet of chain recovered on the third expedition managed by Dr. Nancy Foster, the Chief of the Sanctuary Programs Division. Such recoveries provide valuable information on deepwater excavation and conservation of large artifacts, and add to the public's understanding and appreciation of the MONITOR and its role in our national history. In the case of the MONITOR, the Federal Government has established a program which adequately protects a nationally significant historic resource.

Our primary management objective in this particular Sanctuary is to recover and interpret as much of the ship as is technically and fiscally feasible. We are currently in the process of preparing a project plan which sets out options for recovery, conservation, display and funding. Marine Sanctuary designation of other shipwrecks will mean active management but not necessarily recovery. An interpretive plan will be developed and implemented and a research plan designed to recover the maximum information. In those instances where appropriate a recreational plan would also be developed. Only in unique cases such as the MONITOR would recovery even be an option. We expect that few shipwrecks will nold places in history similar to the MONITOR's and management of less important ones would focus not on recovery but on maximizing our understanding of history through study and interpretation.

The Department recognizes, however, that creating marine sanctuaries to protect shipwrecks of outstanding national importance such as the MONITOR does not afford protection for the broad class of historic shipwrecks sought in S. 1504. The Department also recognizes that legislation clarifying the authority of states to protect historic shipwrecks is desirable and supports this goal. We have some additional comments on clarification of administrative responsibilities in connection with the marine sanctuary program.

Definition of Historic Shipwrecks. S. 1504 defines shipwrecks as historic if they are of "historical, archeological, scientific, or educational interest" and are eligible for or are listed on the National Register of Historic Places. The Department prefers the definition contained in H.R. 3194 which defines historic shipwrecks as those that are older than 50 years, because we not believe many states would be capabable of reviewing all shiprwrecks to determine if they meet the standards for listing on the National Register as required by the definition contained in S. 1504. Shipwrecks of minimal historical and cultural interest should not be considered historic shipwrecks. Since the 50 year definition would only authorize and not require states to manage shipwrecks as historic, we presume few states would go to the expense of protecting shipwrecks that are not in this category.

Management Jurisdiction of Historic Shipwrecks Under S. 1504 and Title III. S. 1504 places jurisdiction over historic shipwrecks outside state waters in the Department of the Interior. For most of the wrecks falling within the bill's definition of historic shipwrecks the limited management by Interior as provided by the bill is appropriate. However, for certain shipwrecks of great national significance, such as the MONITOR, we believe that the option of a more active management program as authorized under Title III should be available to this Department. Therefore, we recommend that S. 1504 be amended to recognize Commerce's authority under Title III to designate nationally significant "historic shipwrecks" as marine sanctuaries, and to permit Commerce to review any shipwreck which meets the bill's definition as an "historic shipwreck" for possible marine sanctuary designation. Such an amendment would clarify each agency's management responsibilities and build upon Commerce's experience in protecting, studying and recovering the MONITOR.

Again, we expect that only a limited number of historic shipwrecks will merit active management measures under the National Marine Sanctuary Program. To help minimize the taxpayer's costs of such management, we recommend that the Department be authorized to seek and expend private donations for these purposes.

State Authority. Since 1963, twenty-six states have passed legislation to manage historic shipwrecks in their waters. Most of these laws provide in some way for private recovery activities.

The Department supports the bill's provision clarifying the jurisdiction of states over historic shipwrecks found within state waters. We further recommend that the Committee clarify that the bill is not intended to grant title or jurisdiction to shipwrecks within state boundaries that are claimed or protected by the Federal government.

Mr. Chairman, this concludes my prepared statement. I hope these comments will be of assistance to you.

STATEMENT OF DR. NANCY FOSTER, CHIEF, MARITIME SANCTUARIES, OCEAN AND COASTAL RESOURCE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Dr. FOSTER. I'd like to tell you something about the *Monitor* because it is the only project of its kind, at least in this country, where we manage a shipwreck on the Outer Continental Shelf.

Now, we think that the *Monitor* falls into a unique category of historic shipwrecks. The ship is actually one of a kind. When she was launched she represented completely innovative engineering design in shipbuilding. In fact, she was so innovative, she had so many gadgets no one had ever seen before that they referred to her as Erickson's folly, and they were convinced that she would never float. But she did.

But, apart from that, the major role that the ship played in the history of our Nation in general made her really a national treasure, a national resource. We figure that there will only be a handful—and you can probably count them on the fingers of one hand—a handful of ships that would fall into this category and be of significance similar to that of the *Monitor*.

For those ships that do not fall into this category, we would not be proposing management of the same type that we are undertaking for the *Monitor*. Instead, we would more than likely leave the ships on the bottom and conduct research, gather information, and then tell the story to the American public.

As Mr. Tweedt has indicated, after the ship was designated as the Nation's first national marine sanctuary, she sort of languished on the bottom. We made sporadic attempts to get out there and find out what we could about the ship. There was a lot of mumbling and lot of vague talk to the effect that "Well, we really should do something with the ship because it is a national treasure."

Finally, over the past year, we decided that we were going to have to take some kind of action. We were going to have to make a decision either to try to recover as much of the ship as was technically and financially feasible or that we would not do so and thus put the issue to rest once and for all.

Now the decision had become even more critical because we were getting engineering assessments and more recently information from a rate of deterioration study which indicated that a portion of the hull and an adjacent armor belt were stressed to their ultimate strength and it was likely therefore to collapse at some point in the near future. This is sort of like predicting the California earthquake. It could happen tomorrow or it could happen a 100 years from now. We felt that if we were going to act that we needed to act sooner rather than later. If the ship did collapse, a lot of information would be lost. In fact, it would probably eliminate any possibility for future recovery.

So we organized an expedition last summer to accomplish several things. First of all, if we were going to try to undertake the effort of recovering as much of the ship as we could, and since we maintain that our management of the sanctuary is for the benefit of the American public, we felt that it would behoove us to find out if the

American public cared about the fate of the ship. One of the reasons for this expedition therefore was to test the waters, if you will, of public opinion.

To do so we decided that we would try to look for and recover the anchor. It was a significant artifact, as you've already heard, plus we felt it would give us valuable information on the conservation of large iron artifacts that we could use in future recoveries, if we do any.

Well, we went and we got it. We brought it back. I must say that we certainly found out the answer to our question about public interest. in the *Monitor.* We were overwhelmed by the positive reaction we got as the result of this expedition. This positive public reaction did not come just from New York, where the ship was built, Virginia where it fought, or North Carolina where it sank, but from the east coast to the west coast, throughout the midwest and the southwest. We got the answer to that question.

We are right now in the midst of preparing a plan that will lay out the steps we will take over the next years to try to accomplish our objective of raising as much as we can, conserving as much as we can, and displaying as much as is technically and financially feasible. "Financially feasible" is probably a bigger problem than "technically feasible." This is not the kind of project where you can say, "Well, I'll get together a few dollars and I will do part of it this year and raise addition funds and do more next year." In this field, that is completely irresponsible. You don't bring up artifacts unless you know that you can conserve them and display them appropriately.

We know also that the U.S. Government is not in a position today, nor probably should it be, for funding a project of this magnitude. However, we have learned by talking with people in Great Britain that the private sector can and will support projects like this if they are really interested in them. That is why we are asking for the authority to raise funds for the *Monitor* and any other shipwreck of similar significance.

I will be very glad to answer questions and we can supply you with any other information which you might need on this particular issue. Thank you, Mr. Chairman, for the opportunity to testify.

Senator WALLOP. Thank you, Dr. Foster.

Dr. FOSTER. Yes, sir.

Senator WALLOP. How many divers did you have for this expedition?

Dr. FOSTER. How many?

Senator WALLOP. Yes.

Dr. FOSTER. We had four actual divers. We made use of the R.V. *Johnson,* which is a research vessel from the Harbor Branch Foundation in the private sector. We used a lockout submersible, which the ship carries. The *Monitor* lies in 225 or 230 feet of water 16 nautical miles offshore. You don't just dive. You take down a sub and work. We had divers from the private sector and one diver from the State of Virginia.

Senator WALLOP. Were you one of them?

Dr. FOSTER. No. Unfortunately, I was on the top, Senator.

Senator WALLOP. Your thoughts about the private sector may work. I cannot, for the life of me, remember the ship that the English just brought up.

Dr. FOSTER. The *Mary Rose.*

Senator WALLOP. Yes, the *Mary Rose.*

Dr. FOSTER. Yes.

Senator WALLOP. Go ahead.

Dr. FOSTER. We spent some time talking to the woman who is the director of that project. She is very supportive of the idea of setting up trusts.

Senator WALLOP. How much would it take?

Dr. FOSTER. We are trying to determine that. Ask me that in January and I can give you a pretty good figure. We are talking about millions of dollars.

Senator WALLOP. I understand that, yes.

Dr. FOSTER. Yes.

Senator WALLOP. We'd be interested in following that. They were pretty successful.

Dr. FOSTER. They were.

Senator WALLOP. They were pretty successful in raising money not only in England, but here for it.

Dr. FOSTER. That's right.

Senator WALLOP. If they can raise money to raise an English ship, we ought to be able to raise money in America to raise American ones.

Dr. FOSTER. She indicated to me that she thought that we could raise money in Great Britain for the *Monitor.* The turnabout is fair play.

Senator WALLOP. Absolutely. Are there others that have been identified like the *Monitor* that are in need of similar kinds of attention from you or your agency?

Dr. FOSTER. None that have been presented to me. I tried to find the answer to that question before I came here. We are not aware of any ships of this caliber.

Senator WALLOP. Yes.

Dr. FOSTER. That doesn't mean that there aren't any, but I am just not aware of them.

Senator WALLOP. Thank you.

Dr. FOSTER. Yes, sir.

Senator WALLOP. Senator Hecht, do you have any questions?

Senator HECHT. No, Mr. Chairman.

Senator WALLOP. This has been fascinating testimony. Certainly it goes along with, but beyond what we are talking about here. I would say, just from my own perspective, I would be most happy to follow that and see whatever assistance could come out of this subcommittee.

Dr. FOSTER. Thank you.

Senator WALLOP. I thank you both very much.

Dr. FOSTER. Thank you.

Mr. TWEEDT. Thank you, Mr. Chairman.

Senator WALLOP. The next witnesses consist of a panel.

We have Capt. Harry Allendorfer, director of maritime preservation program, National Trust for Historic Preservation.

We have Mr. Rod Little, president, National Conference of State Historic Preservation Officers, who is accompanied by John Fowler, general counsel of the Advisory Council on Historic Preservation.

You may proceed, Captain Allendorfer.

STATEMENT OF CAPT. HARRY ALLENDORFER, USN (RET.), DIRECTOR, MARITIME PRESERVATION, NATIONAL TRUST FOR HISTORIC PRESERVATION

Captain ALLENDORFER. Good morning, Mr. Chairman. We are certainly delighted that you and the members of your subcommittee asked us to come to testify because we feel very strongly about this whole thing.

The National Trust, as you know, is dedicated to the preservation of our whole heritage. Not the least of that is our rich maritime heritage. It is a very integral part of that. As to the maritime heritage, we feel very strongly that the treasures beneath the sea are, again, an integral part of that park. They certainly need to be protected. We have to be sure that these are available for scholarly and responsible research to learn something about our past and help us in that way in going in the future. We can learn a lot materially and inspirationally and spiritually by these things.

It is essential that something be done to protect these treasures from commercial exploitation and destruction by people whose interests do not include archeological reviews and handling of these particular treasures.

Unfortunately, as you know, recent Federal court decisions held that the Federal maritime salvage law shall govern.

As a sailor for some 45 years, I feel very strongly about the maritime salvage law and maritime law is good, but in this case, unfortunately, it is not good because it is not applicable. It wasn't designed to do anything about historic shipwrecks. To use it in that regard it just wasn't intended down the line.

Therefore, we strongly support, the National Trust strongly supports the objectives, the major objectives of the bill, which is, of course, removal of shipwrecks from the jurisdiction of Federal maritime law.

As part of our preparation for this, our legal staff, our very capable legal staff, headed by the general counsel, did a thorough study of all of the laws which pertain to this general area. It is quite a few, which is one of the problems. The conclusion came out loud and clear that this area of the law is badly in need of updating, which is being attempted by this bill.

We have attached to my testimony which we submitted this several page study which may be of assistance and it might help out.

This also led us to the conclusion that it is incumbent upon Congress to act quickly in order to adequately protect these national treasures.

As Nancy Foster, my good friend, mentioned before, you can't say how quickly because who knows what is going to happen to each and every one of them under the sea. It is not as though they had been there for 100 years, so let us leave them there for another 100 while we think about it. They are deteriorating. There are

earthquakes happening down there, and so forth. Time is of the essence in this.

I must say that our support of the underlying intentions of S. 1504 is somewhat mitigated by some flaws or features in it which we feel should be addressed in order not to weaken the bill. We feel that these features might work against the ultimate obtaining of the objective.

One thing is that, in making State laws applicable, it does not acknowledge that, while some States, Florida, the great State of Texas, North Carolina, and Maryland, they do have good laws and a good system and good people like Rodney, but some of the States that have regulations, that they are not quite adequate.

We feel that the bill should address this problem. We feel that no restrictions on the authority of the States to manage State water should be imposed in the cases where States do have an adequate system. However, there should be some provision where this system does not exist, that the Federal Government can step in and take it, or set standards for the States. Perhaps the Interior Department could come up with some standards in that area that would allow any State that wanted to qualify to take care of their own shipwrecks.

We feel that any system for this protection should be developed in that way. To this end, we suggest that we look at the existing system in effect that Jerry Rogers mentioned in his testimony, the system for the National Register for qualifications for defining historic shipwrecks and also for designating them as national historic landmarks and for the control of them. Just because a shipwreck is on the bottom it is not all that different from an archeological treasure under the desert or anywhere else in the country. There is law and precedent for a lot of this.

We also feel, as has been mentioned in the Marine Sanctuaries Act, title III, which authorizes the Secretary of Commerce to preserve and restore important cultures, that this has proven to work. This has worked very well on the *Monitor*. I'm quite familiar with the *Monitor*. I have been, I'd like to say, deeply involved with it ever since the start. I did make a dive on it myself. I have been down and seen it. You are right, sir, that it is the most thrilling thing that has ever happened to me. It is a provocative thing.

We were also involved with the *Mary Rose* and I do know a lot about what is happening in that area. We feel that the Marine Sanctuaries Act certainly has a potential for accomplishing the objectives being sought with 1504. Possibly it is a little too cumbersome and possibly it is not. We maybe could look at some ways to streamline it a little bit. Maybe we should let the Interior Department do the designation of what is historic and which is not, much as they do on the land. Then let the Commerce Department under the act take control. We recommend it be given a good, hard look.

We would like to reiterate our strong stand in favor of any effective legislation that covers the whole waterfront, if you will, which S. 1504 doesn't quite do at the moment. This is to provide protection for all of this. We stand ready in any way, shape or form at the National Trust to help further the efforts in this regard, sir.

I stand ready also to answer any questions.

[The prepared statement of Captain Allendorfer follows:]

National Trust for Historic Preservation

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STATEMENT OF CAPTAIN HARRY ALLENDORFER, USN (Ret), DIRECTOR
MARITIME PRESERVATION
NATIONAL TRUST FOR HISTORIC PRESERVATION

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATERS
OF THE ENERGY AND NATURAL RESOURCES COMMITTEE
UNITED STATES SENATE
ON S. 1504, A BILL TO PROTECT HISTORIC SHIPWRECKS

October 21, 1983

Introduction

Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to appear today to testify in support of efforts to strengthen the protection for historic shipwrecks.

The National Trust for Historic Preservation is dedicated to the preservation of America's rich maritime heritage. A significant and highly important part of this national heritage is embodied in historic shipwrecks and historic structures which lie on the seabed or in the subsoil of the lands beneath the navigable waters within our territorial boundaries and to seaward as far as the outer limits of the continental shelf. If we are to preserve effectively and completely this portion of our heritage, we must insure that historic shipwrecks are forever available for us to extract the lessons and inspiration they hold, in a responsible and scholarly manner. To do this, they must be protected from commercial exploitation and destruction by individuals whose short-term interests in historic shipwrecks do not include sound archaeological methods to preserve these national cultural resources for future generations of Americans.

The Law of Maritime Salvage

Unfortunately, recent Federal court decisions have held that the Federal maritime law of salvage shall govern the rights and responsibilities of individuals engaged in the recovery of historic shipwrecks. The use of salvage law principles, which was developed centuries ago for application to circumstances of ships in peril, can lead to frequent destruction and loss of artifacts of great archaeological and scientific interest when applied to recovery operations on historic shipwrecks that have been on the seabed for decades or centuries. These legal principles have been held by Federal courts to preempt otherwise applicable State laws requiring a scientific and

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sensitive recovery of historic shipwrecks. It should be noted that these States laws do not prevent exploration or recovery of such shipwrecks by treasure salvors or sport divers, but rather regulate the manner in which such operations are undertaken, recognizing the great public interest in the information which these resources possess. This being the case, the National Trust strongly supports the major objectives of S. 1504, the removal of historic shipwrecks from the jurisdiction of the Federal law of maritime salvage.

An analysis of the current law as applied to historic shipwrecks by the General Counsel of the National Trust for Historic Preservation also concludes that the Federal maritime law does not offer an effective method of protecting these resources, nor does it recognize a State's historic and archaeological interest. The General Counsel's analysis further states that this area of historic preservation law is in need of updating. These underwater sites are now subject to exploitation as were historic and archaeologic land sites at the beginning of the twentieth century, when anyone could pilfer and destroy these sites while searching for arrowheads or valuable artifacts. Since the courts have compounded the problems under current law to the detriment of the public's interest in historic shipwrecks, it is incumbent upon the Congress to act in order to adequately protect these national treasures. Our legal analysis is appended to this statement.

The Role of the States and the Federal Government in the Protection of Historic Shipwrecks

Our support of the underlying intentions of S. 1504 to offer protection for historic shipwrecks is mitigated by several features of the bill which could be detrimental to the accomplishment of its objectives. In making State laws applicable to historic shipwrecks, S. 1504 does not acknowledge that, while some States, like Florida, Texas and North Carolina, have strong and sensitive programs for the protection of these resources, others do not. In addition, those States that do have the regulatory capability may not offer effective protection.

Further, the bill does not address the protection of shipwrecks located outside on the Continental Shelf to seaward of the three-mile state territorial limits. States cannot have jurisdiction over these shipwrecks, and the only Federal law which addresses this type of regulation is the Marine Sanctuaries Act which is not adequate for the full protection needed.

We believe that no restrictions on authority of States to manage historic shipwrecks in State waters should be imposed in cases where States have in place laws and effective procedures for such management. However, there should be provisions for Federal management and/or oversight where States are not prepared to exercise this responsibility. A procedure to determine States' capability in this regard should be established within the Department of the Interior. State sovereignty would be allowed for shipwrecks within State waters in those States meeting Federal standards. In the absence of a State program, the Federal government would operate a permit system to control

access to those shipwrecks listed in or determined eligible for the National Register of Historic Places within State boundaries and would develop a system for control of access to all such historic shipwrecks to seaward of outside the three-mile limit as far as the outer limits of the outer continental shelf.

The basis for our view is that any system for the protection of historic shipwrecks ought to be developed using the standards in the present Federal approach for the protection of historic and cultural resources on land, including historic shipwrecks, as provided in the National Historic Preservation Act of 1966, as amended. To this end, we suggest H.R. 69 as a model. This legislation, introduced by Representative Charles E. Bennett (D-FL), calls for transfer of historic shipwrecks to States after the development of an adequate State plan and provides for civil penalties for those who injure shipwrecks under the jurisdiction of the United States.

The Marine Sanctuaries Act (Title III) authorizes the Secretary of Commerce to preserve and restore important threatened cultural resources, including historic shipwrecks, as far seaward as the outer edge of the Continental Shelf, as well as in States' waters. This authority has already been successfully exercised in designation of a Marine Sanctuary around the historic Civil War ironclad USS MONITOR, which lies 16 miles off the coast of North Carolina. This protects the MONITOR from any actions which would disturb the ship and provides for management and control procedures which insure that the only activity which takes place is that which contributes to increased knowledge of that portion of our maritime heritage embodied in the MONITOR.

The Marine Sanctuaries Act, if amended, could be used for the designation and protection of those most important historic shipwrecks, much as we use the National Historic Landmark program to recognize our most significant architectural resources. At the very least, any new legislation should recognize the existence of the Marine Sanctuaries Act and be coordinated with it.

In summary, we would like to reiterate our strong stand in favor of any legislation which effectively provides for protection and management of an historic shipwreck or historic structure located on the seabed or in the subsoil of lands beneath naviable waters within the boundaries of the United States and as far seaward as the outer limits of the outer continental shelf.

We appreciate the opportunity to submit this testimony and we stand ready to provide further assistance to the Committee and its staff as required.

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MEMORANDUM FROM THE OFFICE OF GENERAL COUNSEL
THE LAW OF HISTORIC SHIPWRECKS:
CONFLICT AND CONTROVERSY

With proposed legislation in Congress[1] and a petition for certiorari recently considered by the United States Supreme Court[2], the issue of the protection and preservation of historic shipwrecks has vaulted into the national political and legal arenas. Although an issue in federal courts since 1976[3], the battle over what law should govern and who should be responsible for these resources has recently intensified. On one front are the archeologists, the preservationists, and the states who argue that historic shipwrecks are best protected by state antiquities statutes which require permits before any exploration or excavation. Under these laws, dominion and control over these resources is given to the state, as it is with other historical and archeological sites. On the other front are the salvors or treasure hunters who argue that maritime's law of salvage and the law of finds control the fate of these historic shipwrecks and displace any state authority over them in favor of the individual salvor.

The federal courts have exclusive jurisdiction over the matter[4] and have consistently held for the salvors by applying federal maritime law and preempting any state regulatory controls. Pending federal legislation, however, may direct federal courts to apply state regulatory schemes, an action which may radically affect salvor's operations. Until such a time as a comprehensive legislative solution is achieved, however, the courts will continue to be responsible for navigating the complex interplay of the federal maritime law of salvage and the law of finds, state regulatory controls, and the question of ownership of the seabed and artifacts lying on or in the seabed.

FEDERAL MARITIME LAW

The federal courts' exclusive jurisdiction over admiralty cases includes matters regarding the navigable waters of a state, the United States, and even the high seas.[5] Legal disputes over the ownership or recovery of an historic shipwreck in any of these navigable waters must be resolved in a federal court. Once in court, a salvor will typically argue one of two theories. Most commonly, a salvor will assert that he is entitled to a monetary award based on maritime's deeply rooted doctrine of the law of salvage, which provides a money award to a volunteer salvor who has successfully aided a distressed property. An award is usually made from the proceeds of the sale of the property by the court. By offering a monetary award, maritime law is said to encourage the rescue of ships or other property in distress.

Elements of a Salvage Claim

To be entitled to a salvage award, the claimant must establish three elements: (1) marine peril; (2) voluntary service; and (3) success in whole or in part of the service.[6] Voluntary service and success in whole or in part are relatively simple elements to establish. A salvor's service cannot be required as part of an existing duty, and as long as a beneficial result is attained, the service is held to be successful. In historic shipwreck cases, marine peril has become the most important issue in applying salvage law. It is a broad concept; while immediate danger is not required, danger which can be reasonably apprehended is necessary. An old English case provides a useful description of the concept: "it will suffice if, at the time assistance is rendered, the vessel has encountered any damage or misfortune which might possibly expose her to destruction if the services were not rendered."[7]

Once a salvor establishes these three elements, a court will award a liberal salvage award based on such factors as the degree of danger present in the rescue, the value of the property saved, and the time and labor expended by the salvor. This award is usually not greater than one half the value of the property recovered, although this rule of thumb applies only when the owner of the recovered property exists. In the case of abandoned property such as historic shipwrecks, an award can consist of the entire property or all the proceeds from the sale of the property.

In a series of cases involving the State of Texas and a private salvor, Platoro Ltd. v. Unidentified Remains, Etc.,[8] Texas focused one of its arguments over the control of a historic shipwreck on the lack of a valid salvage claim by the salvor. Texas claimed that the element of marine peril was absent when Platoro excavated the Spanish galleon Espiritu Santo because the ship was embedded in the ocean floor and effectively protected from further destruction by a thick layer of sand. The U.S. Court of Appeals for the Fifth Circuit recognized that it had ruled on a "strikingly similar" issue in its Treasure Salvor's I decision, in which it had held that since the Atocha had been lost for more than three hundred years and was still in danger of being lost through the action of the elements, marine peril was present.[9] In Platoro, the court said it could not find any basis for distinguishing Treasure Salvors I from the case before it and held that marine peril exists as a matter of law where a ship's location is unknown,[10] thus ruling that the wreck was governed by the law of salvage rather than by Texas' law. This conclusion departs from general salvage law, which views marine peril as a question of fact to be determined from the circumstances present in each case.[11]

Texas sought to overturn this marine peril holding by the Platoro court in its petition for certiorari to the the Supreme Court, where it argued that often the greatest peril to irreplaceable historic remains stems not from the elements but from improper excavation and loss of scientific

information.[12] Texas supported its argument that marine peril is a question of fact with testimony given at the trial level by an ocean engineering expert who concluded that the wreck site of the Espiritu Santo was not subject to any peril, either imminent or reasonably to be apprehended, because it was buried in the sand.[13]

It should be noted that this argument would not provide complete state protection to shipwrecks. Because the element of marine peril will be viewed as a question of fact, a salvor may still be able to prove marine peril in a particular case, and, thus, assert control over the shipwreck under the law of salvage. But where marine peril cannot be proved, state laws may be applicable and would not be superceded by the law of salvage. However, even if a salvor cannot obtain a salvage award, he may still be successful in asserting ownership based on the law of finds.

SHIPWRECK OWNERSHIP UNDER THE LAW OF FINDS

The law of finds provides that the first finder of abandoned property who reduces the property to his or her possession gets title to the property. In Cobb Coin v. Unidentified, Wrecked and Abandoned Sailing Vessel [14] and Treasure Salvors v. Unidentified, Wrecked and Abandoned Sailing Vessel [15], the courts held that the law of finds was applicable in determining the ownership of historic shipwrecks, thus state ownership claims based on state laws were preempted.

In Klein v. Unidentified, Wrecked, and Abandoned Sailing Vessel[16], however, the court held that the salvor was not entitled to the ownership of a shipwreck based on the law of finds. The court recognized that generally the ownership of the land upon which the abandoned property is found does not affect the determination of the finder's right to the property. The court also took note that this general rule is qualified when the property is embedded in the soil or when the property is in constructive possession of the owner of the land. The salvor, Klein, claimed ownership of a wreck submerged within the three-mile territorial sea of Florida and within the confines of Biscayne National Park, land owned in fee title by the United States. The court ruled against the salvor, holding that both qualifications to the law of finds were present and that the ship was not abandoned or lost.

The ship was shown to be "substantially buried in and firmly affixed to the land" to which the United States acquired title in 1973.[17] Thus, Klein's finder's right was extinguished under the first qualification. Regarding the second qualification, the court found under the general law of finds that if one is in constructive possession of property, such property cannot be considered legally lost and is not subject to a finder's claim. The court defined constructive possession as "'knowingly having both the power

and the intention at a given time to exercise dominion or control over the property.'"[18] Because the United States had prepared a Preliminary Archeological Assessment of Biscayne National Park, which identified forty-six wreck sites, it had general knowledge of the ship in question, even though it was not initially identified.[19] Further, the court held that the United States has the power to exercise dominion and control over the land under the Property Clause of the Constitution as construed by Kleppe v. New Mexico.[20] The intent to exercise this power, the court said, was evidenced by various federal statutes "protecting objects found within national parks and objects found on public lands," [21] -- the National Park Service Act [22], the Antiquities Act[23], and the Archeological Resources Protection Act.[24]

Klein is the first federal case ruling against a salvor, but its contribution to the preservation of historic shipwrecks may be limited because of its unique facts involving a shipwreck on land within a national park to which the U.S. acquired the title and because of Klein's questionable salvage techniques. It is significant, however, that a federal court recognized that treasure hunters do not always have the best archeological interests in mind when they begin excavation of a site. Although other federal courts have recognized a government interest in the preservation of artifacts when making a salvage award[25], the Klein court seemed to base its holding against the salvor, in part, on this interest to preserve archeological remains.

Arguments of the Salvors and the States

Treasure salvors argue that the law of salvage and the law of finds adequately protect historic shipwrecks and further the goals of historic preservation. They cite situations where salvors have found such shipwrecks and have successfully excavated and preserved the remains of these sites. They argue that if these laws are made inapplicable in this area, any incentives to discover and excavate these wrecks will be lost. These incentives are either money awards or proceeds from the sale of the recovered artifacts. The salvors argue that monetary incentives presently provide them with an impetus to preserve artifacts and cargo as found. By doing this, the salvors say that they can recoup higher salvage awards or bigger sale proceeds. Thus, they believe the current system of private enterprise-- a system which the courts have upheld-- works hand in hand with historic preservation to produce a favorable result to all.

Interested states and most archeologists argue that federal maritime law should not apply to historic shipwrecks because it "take[s] no account of modern state interests in preservation and scientific investigation of sites with historical and archeological significance."[26] These advocates compare the state of the law on underwater resources with that of land-based archeological sites, where state regulation of these sites is recognized by the courts as an important state interest. Historic shipwrecks and

underwater archeological sites, however, have yet to be afforded such protection or to be equated with land-based sites in terms of their importance. Instead, they are held to be governed by an ancient doctrine of maritime law which is said to act as a "license to loot"[27] for salvors who more often excavate for profits rather than for scientific and historic ends.

STATE REGULATION OF HISTORIC SHIPWRECK RECOVERY

Many states have asserted control over historic shipwrecks by incorporating their protection and preservation into statutes designed to protect land-based historic and archeological sites. Most statutes are characterized by licensing and permitting schemes, the awarding of salvage contracts, and the requirement that salvors' operations be supervised by a professional archeologist. Texas' Antiquities Code is typical of many statutes, declaring that:

> It is the public policy and in the public interest of the State of Texas to locate, protect and preserve all sites, objects, buildings, pre-twentieth-century shipwrecks, and locations of historical, archeological, educational, or scientific interest, including . . . sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, pre-history, history, natural history, government, or culture in, on, or under any of the land in the State of Texas, includng the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.[28]

The Texas code further states that all sunken or abandoned pre-twentietn century ships and wrecks of the sea and their contents within Texas' three-mile territorial sea are declared state archeological landmarks.[29] These landmarks are governed and regulated by an Antiquities Committee which is empowered to issue permits and contracts for scientific investigations and archeological investigations on these sites.[30] No investigation or work on these sites can begin without first obtaining such a permit from or a contract with the state. Criminal penalties are provided for any violations of the code.

Under regulations promulgated by the Antiquities Committee to interpret the statute,[31] a permit may be issued to a private individual or corporation, like a treasure salvor, who obtains a professional archeologist to oversee the investigation or salvage project, and who provides proof of adequate funds, equipment, and personnel available "to properly conduct the investigation as proposed to the Antiquities Committee."[32] Permits may be issued for projects such as underwater surveys, underwater test excavations, and underwater excavations — with standards for acceptable procedures defined in the regulations for each activity.[33] Investigations may be monitored at any time,[34] and a permittee must file a detailed investigation report at the completion of his investigation.[35] While all

materials and artifacts remain the property of the state, the Antiquities Committee has the power to determine the final disposition of these items, taking into consideration their historical importance to the state.[36]

A Florida case Cobb Coin Co. v. Unidentified, Wrecked and Abandoned Sailing Vessel [37] illustrates the conflict between a salvor who claims ownership of a shipwreck based on the law of finds and a state which asserts ownership of all wrecks within its territorial waters based on its antiquities act. Florida's Archives and History Act provides a comprehensive scheme to protect sunken ships in areas that have been designated as state archeological landmark zones. Before any excavation can begin on sites within these zones, a license must be obtained by the potential salvor. Any person who has failed to obtain a license is subject to criminal prosecution.[38] Through regulation, Florida has included "state-owned sovereignty submerged lands" within the scope of its Archives and History Act.[39]

Cobb Coin was an unlicensed salvor who brought this action before a federal district court in Florida in order to seek a declaration on the status of the galleon in question. Although Florida had licensed another salvor to excavate and explore the galleon, Cobb Coin argued that ownership of the shipwreck should be based on the law of finds rather than on Florida's Archives and History Act. The court characterized the issue as "whether a federal district court sitting under admiralty jurisdiction in a salvage action must give effect to a state law which conflicts with the substantive principles of federal maritime law." [40] The court held that Florida's law should not be given effect because it conflicted "impermissibly" with maritime salvage principles, and under the supremacy clause of the U.S. Constitution, such inconsistent state law could not stand.[41]

Florida's law was held to conflict with the law of salvage in three ways. First, it restricted the right of potential salvors to explore the high seas for salvageable sites. [42] Second, the law could allow "unmeritorious salvors" the exclusive right to excavation of a site, in contravention of maritime's policy of rewarding only those salvors who act with due diligence and possess the ability to save the property.[43] In the instant case, the state licensed salvor demonstrated "indifference" toward the site.[44] Third, the court held Florida's system of fixed compensation for a salvage award conflicted with maritime's policy of a liberal salvage award based on risk and merit.[45]

In Cobb Coin, Florida based its right to govern salvage operations on the Submerged Lands Act of 1953 (SLA).[46] It claimed that this statute, because it quitclaimed title to the "lands beneath navigable waters within the boundaries of the respective States" to the states, gave Florida the right to lay claim to abandoned wrecks within its territorial waters.[47] The Cobb Coin court held that Congress in enacting the SLA did not contemplate an ouster of federal maritime jurisdiction and of federal principles to

traditional salvage claims."[48] Rather, the 1953 Act concerned the "disposition of natural resources in the submerged lands of the three-mile belt -- and hence, the right to determine who could enter into leases regarding oil well activity [emphasis added]."[49]

The court's interpretation of the SLA was based on an earlier interpretation of the Outer Continental Shelf Lands Act (OCSLA) in Treasure Salvors I.[50] In that case, the Fifth Circuit held that OCSLA gave the United States an ownership interest in only the natural resources discovered on the outer continental shelf and not in historic shipwreck sites.[51] The district court in Cobb Coin, by analogy, applied the same rationale to OCSLA's companion statute, the SLA.

In one of the Treasure Salvors cases[52], Florida argued, as it was to argue later in Cobb Coin, that it had asserted control over shipwrecks through its Archives and History Act. The court held that a state cannot constitutionally alter general admiralty and maritime jurisdiction; to do so would conflict with the federal courts' exclusive jurisdiction over all cases of admiralty and maritime law.

The series of Treasure Salvors cases[53] also involved the issue of whether the United States' claims of ownership in the Spanish gallwon Atocha would be preempted by the law of finds. Initially, the United States, at Florida's request, claimed ownership of the Atocha under the doctrine of sovereign prerogative, which states that the sovereign takes title to abandoned property recovered at sea by its subjects.[54] The United States maintained that it had legislatively asserted this English commom law doctrine through the Abandoned Property Act[55] and the Antiquities Act.[56]

The court rejected this argument, ruling that the Abandoned Property Act applied only to the recovery of property abandoned as a result of the Civil War. The Antiquities Act, the court recognized, authorizes the President to declare "objects of historical or scientific interest that are situated upon lands owned or controlled by the government of the United States, to be national monuments."[57] Control of the Atocha, the U.S. argued, was asserted through OCSLA. However, as OCSLA was held to be inapplicable to historic shipwrecks, it could not provide the basis for asserting control of the shipwreck through the Antiquities Act.

After Cobb Coin and Treasure Salvors, it is apparent that state statutes which attempt to regulate the protection and preservation of historic shipwrecks, and even federal claims of ownership over these wrecks, will be preempted by federal courts as long as maritime law is held to control this area of historic preservation. A recent First Circuit decision has, however, clouded the issue of federal court review of ownership claims to historic shipwrecks.

In Maritime Underwater Surveys, Inc. v. Unidentified, Wrecked, and Abandoned Sailing Vessel, the court held that when a state asserts title to a shipwreck

located within its territorial seabed, the Eleventh Amendment bars federal adjudication of the state's interest, absent its consent.[58] The salvor's in rem admiralty action was held to be "in all but form" an action against the Commonwealth of Massachusetts.[59]

Massachusetts entered only a restrictive appearance in the case and did not waive its Eleventh Amendment immunity. Although the First Circuit did not reach the issue of Massachusetts' claim of ownership of the wreck, which was based both on the Submerged Lands Act and a state statute which asserts that Massachusetts holds title to unclaimed archeological resources within its coastal waters, the Court did note that Massachusetts' ownership claim "is at least colorable."[60] The Court also did not rule on the issue of a federal district court adjudicating the rights of claimants to a shipwreck "as against sovereigns that did not appear and voluntarily assert any claim that they had to the res."[61] In addition, the court distinguished Cobb Coin by noting that in that case Florida had entered a general appearance before the federal court and requested declaratory and injunctive relief, thus waiving its Eleventh Amendment immunity.[62]

The effect of Maritime Underwater Surveys is somewhat unclear, but it appears that the decision could be used effectively by the states to bar private salvors from asserting maritime claims in federal court, as long as the states make a limited appearance to assert a colorable claim to the shipwreck and an Eleventh Amendment immunity. Salvors would thus have to assert their claims in state courts, which may follow federal court precedent or may side with the states and apply their regulatory schemes. In any case, the effects of Cobb Coin and Treasure Salvors are diminished by the First Circuit's groundbreaking holding.

PROPOSED FEDERAL LEGISLATION TO RECOGNIZE PRIMACY OF STATE REGULATION

In June of 1983, Rep. Walter B. Jones (D-NC), Chairman of the Committee on Merchant Marine and Fisheries, introduced H.R. 3194, whose purpose is to "secure for the present and future benefit of the American people, the protection of historical shipwrecks and structures on the seabed and in the subsoil of the lands beneath navigable waters within the boundaries of the respective States."[63] The bill proposes to accomplish this objective by making the "United States maritime law of salvage" inapplicable to any historical shipwreck or structure located within a state's territorial waters and by making the laws of each state applicable to these historical shipwrecks and structures.[64] Thus, states like Texas and Florida could regulate the excavation of shipwrecks within their boundaries through their antiquities acts without fearing that federal courts will render these laws ineffective by applying maritime law principles. Despite this accomplishment, the proposed bill, as currently written, contains major flaws which would significantly compromise its effectiveness.

The bill makes state laws applicable to historic shipwrecks but fails to

recognize that some states do not have regulatory programs, and those states that do may not offer effective protection for these resources. The bill would be strengthened by the addition of a provision similar to the Department of the Interior's certification of state historic preservation programs under the National Historic Preservation Act, in which the federal government acts as regulator in situations where states do not have regulatory programs or do not have ones meeting minimal standards. Second, the Jones bill fails to offer protection to shipwrecks outside the three-mile state territorial limit. The states cannot regulate these shipwrecks because they are not within their jurisdiction, and the federal government currently does not have an applicable regulatory program to protect such sites.[65] Thus, salvage law and the law of finds would still apply to these shipwrecks. Finally, the definition of "historic shipwreck" is weak, relying only on the age requirement for National Register properties (fifty years) and ignoring the possibility of protecting a more recent but nevertheless significant shipwreck. A more workable definition of historic shipwreck might be "eligible for or listed on the National Register of Historic Places."[66]

CONCLUSION

Although in some instances federal maritime law has adequately protected a few shipwrecks, it generally does not offer an effective method of preserving these resources nor does it recognize a state's historic and archeological interest. Historic shipwrecks are presently governed by ancient maritime doctrines which are rooted in the concept of the freedom of the seas. These underwater historic sites are now subject to exploitation as were historic and archeological sites at the beginning of the twentieth century, when anyone could pilfer and destroy these sites while searching for arrowheads or valuable artifacts. Something must be done in order to update this area of historic preservation law. Since the courts have been unwilling to recognize the public's interest in historic shipwrecks, congressional action may be the only other alternative.

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Vice President & General Counsel

Robert E. Moyer
Office of General Counsel

October 1983.

This memorandum will be published as an article in the Preservation Law Reporter (November 1983, National Trust for Historic Preservation).

FOOTNOTES

1. H.R. 3194, 98th Cong., 2nd Sess., (1983). The Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries held hearings on the legislation on September 27, 1983. A similar bill, S. 1504, was introduced in the Senate on June 20, 1983.

2. Texas v. Platoro Limited, Inc., 695 F. 2d 893 (5th Cir. 1983), cert. denied, 52 U.S.L.W. 3262 (October 3, 1983).

3. Treasure Salvors, Inc. v. Abandoned Sailing Vessel, 408 F. Supp 907 (S.D. Fla. 1976).

4. 28 U.S.C.A. § 1333 (West 1975).

5. Benedict on Admiralty, p. 1-24.

6. Benedict, p. 2-1.

7. Benedict, p. 5-2.

8. 371 F. Supp 356 (S.D. Tex. 1973); 508 F.2d 113 (5th Cir. 1975) (Platoro I); F.2d 1051 (5th Cir. 1980) (Platoro II); 695 F.2d 893 (5th Cir. 1983)(Platoro IV), cert. denied, 52 U.S.L.W. 3262 (October 3, 1983).

9. Treasure Salvors, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 569 F.2d 330, 336-337 (5th Cir. 1978).

10. 695 F.2d at 901.

11. Benedict, p. 5-8.

12. Petition of the State of Texas for Writ of Certiorari, (No. 82-1871) pp. 43-44.

13. Id. at p. 41.

14. 549 F. Supp. 540 (S.D. Fla. 1982). See also notes 37 infra and accompanying text.

15. 569 F.2d 330 (5th Cir. 1978). See also note 53 infra and accompanying text.

16. No. 79-4627 slip op. (S.D. Fla., Aug. 17, 1983), appeal docketed, (11th Cir., Aug. 25, 1983).

17. Id. at 6,7.

18. Id., citing United States v. Cousins, 427 F.2d 382, 384 (9th Cir. 1970).

19. No. 79-4627, slip. op. at 7,8.

20. Id. at 8.

21. Id. at 9.

22. 16 U.S.C. § 1.

23. 16 U.S.C. § 431.

24. 16 U.S.C. § 470aa.

25. In both Cobb Coin and Platoro, the court recognized state historical interests in preserving artifacts. The Cobb Coin court said it "would certainly fashion relief which would fully recognize the state's historical and cultural interests without interferring with the plaintiff's federal maritime rights." 525 F. Supp. at 199. In its final judgment, however, the court refused to make any salvage award to the state. 549 F. Supp. at 561. In Platoro, the court said "where Texas has a strong interest in keeping the res because of its historical significance to the State, it is particularly inequitable to compel its sale at this juncture." 695 F. 2d at 904.

26. Petition for the State of Texas for Writ of Certiorari, p. 35.

27. Id. at p. 36.

28. Tex. Nat. Res. Code Ann., Title 9, Chap. 191.

29. Id. at § 191.002.

30. Id. at § 191.051.

31. Tex. Nat. Res. Code Ann., Title 13, Part IV, Chap. 41.

32. Id. at § 41.4 (b)(4)(A), (B).

33. Id. at § 41.5 (5), (6), (7).

34. Id. at § 41.8.

35. Id. at § 41.11.

36. Id. at § 41.12(b).

37. 525 F. Supp. 186 (S.D. Fla. 1981)(preliminary injunction), 549 F. Supp. 540 (S.D. Fla. 1982)(merits), appeal docketed, No. 81-5737 (11th Cir.).

38. FLA. Stat. § 267.13(1).

39. Rules of the Department of State, § IA-31.02.

40. 525 F. Supp. at 200.

41. Id. at 201.

42. Id. at 203.

43. Id. at 206.

44. Id. at 207. It is to this part of the court's findings that salvors point to argue that state licensing schemes do not work because they are unenforceable. Thus, the salvors assert that even if the state is involved the public is not assured that the licensee will diligently excavate and preserve the shipwreck in an archeologically sound manner. The salvors also point to the following part of the Cobb Coin holding to support the application of salvage law: "in order to state a claim for a salvage award on an ancient vessel of historical and archeological significance, it is an essential element that the salvors document . . . that it [sic] has preserved the archeological provenance of a shipwreck." 549 F. Supp. at 559.

45. 525 F. Supp. at 207.

46. 43 U.S.C.A. §§ 1301-1315 (West 1975). Under international law, the territorial sea of a nation is viewed as an extension of that nation's territorial land -- an area where normal rights of jurisdiction and sovereignty can be exercised. The outer limit of this territorial sea extends to twelve miles, with the United States currently claiming a three-mile limit. The Soviet Union, Canada, Egypt, Indian, and Mexico claim a twelve-mile territorial sea. International law also recognizes a two hundred-mile fisheries or economic zone. Until the 1930's, the federal government assumed that the states controlled the submerged lands adjacent to their coasts and within this three-mile territorial sea. But before and after World War II, the federal government began to assert its sovereignty over these areas. Finally in 1945, President Truman issued the Truman Proclamation which declared the United States' jurisdiction and control over the natural resources of the subsoil and seabed of the continental shelf from the coastline to the high seas. The Supreme Court affirmed the federal government's dominion and control in United States v. California, 332 U.S. 19 (1947). These actions led the states to lobby Congress heavily to overturn these developments. Congress reacted positively to the states and in 1953 passed the

Submerged Lands Act (SLA), which returned to the states the "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters . . ." 43 U.S.C.A. § 1311(a). In a companion statute, the Outer Continental Shelf Lands Act (OCLSA), 43 U.S.C.A. §§ 1331-1356, Congress reserved federal jurisdiction over the "subsoil and seabed of the outer Continental Shelf."

47. Apparently, Florida argued what the United States argued in Klein--that abandoned property embedded in the sand belongs to the owner of the land rather than the finder. See note 16 supra and accompanying text.

48. 525 F. Supp. at 215.

49. Id.

50. 569 F.2d 330 (5th Cir. 1978).

51. Id. at 338-340.

52. 459 F. Supp. 507 (S.D. Fla. 1978).

53. 408 F. Supp. 907 (S.D. Fla. 1976); 569 F.2d 330 (5th Cir. 1978) (Treasure Salvors I); 459 F. Supp. 507 (S.D. Fla. 1978); 621 F.2d 1340 (5th Cir. 1980)(Treasure Salvors II); 640 F. 2d 560 (5th Cir. 1981) (Treasure Salvor III); 102 S. Ct. 3304 (the cout only decided the issue of whether the Eleventh Amendment immunized the remains of the vessel from federal court). For discussion of Treasure Salvors III and the Supreme Court decision, see 1 PLR 3033 and 1 PLR 3085.

54. 408 F. Supp. 907; 569 F.2d 330.

55. 40 U.S.C. § 310 (1976).

56. 16 U.S.C. § 431-433 (1976).

57. 16 U.S.C. § 431

58. No. 83-1245, slip op. (1st Cir. Sept. 9, 1983).

59. Id. p. 6.

60. Id. p. 7.

61. Id.

62. Id.

63. H.R. 3194, § 2. S. 1504's purpose and its method of accomplishing this purpose are identical to H.R. 3194's.

64. Id. § 5(a),(b). The bill does not mention the inapplicability of the law of finds, which is not a maritime principle but rather a common law property principle. It is presumed, however, that the intent of the drafters was to include the law of finds within the term "United States maritime law of salvage."

65. The Marine Protection, Research, and Sanctuaries Act (MPRSA), Title III, 16 U.S.C. §§ 1431-1434, authorizes the Secretary of Commerce to designate ocean waters as national marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological, or esthetic values. National marine sanctuaries may be designated as far seaward as the outer edge of the Continental Shelf. In 1975, one such sanctuary was designated to protect the Civil War ironclad, U.S.S. Monitor. This act may be insufficient, however, to protect historic shipwrecks within and beyond the three-mile territorial sea because of the complexity of the designation process, the desire to designate diverse ecological areas, and the fact that in its 13 year history only six sanctuaries have been designated. For newly promulgated procedures involved in this process, see 48 Fed. Reg. 24296 (May 31, 1983).

66. In fact, S. 1504 defines "historic shipwreck" this way.

Senator WALLOP. Thank you, Captain Allendorfer, for your statement.

Mr. Little, you may proceed with your statement at this time.

STATEMENT OF ROD LITTLE, PRESIDENT, NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, ADVISORY COUNCIL ON HISTORIC PRESERVATION; ACCOMPANIED BY JOHN FOWLER, GENERAL COUNSEL, ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mr. LITTLE. My name is Rod Little. I am the president of the National Conference of State Historic Preservation Officers. I am here this morning, Mr. Chairman, in my statutory role, as a member of the Advisory Council on Historic Preservation. I represent our chairman, who is John Aldridge.

I am accompanied this morning by John Fowler, general counsel for the Advisory Council.

The council itself is a 19-member body directed to advise the President and the Congress on historic preservation matters. The membership of the counsel comprises four experts and four members from the general public, a Governor, a mayor, all appointed by the President. Also it is with the heads of six Federal agencies, the Architect of the Capitol, the chairman of the National Trust Preservation and the president of the National Conference of State Preservation Officers.

The principal duty of the council is the review of Federal projects which may have an effect on historic properties under section 106. This is the basis of the council's experience in the protective process for the historic properties.

At the last meeting of the full council in September, the council adopted a resolution and position with regard to S. 1504. I'd just like to read briefly the language of that resolution.

It is that recognizing that historic shipwrecks are a part of the Nation's patrimony, the Advisory Council on Historic Preservation supports legislative clarification of laws affecting shipwrecks listed in, or determined eligible, for the National Register of Historic Places. The council urges, however, that any such legislative actions include historic shipwrecks that are consistent with, that is, in a manner that is consistent with the National Historic Preservation program and its procedures and inter-governmental relationships.

There is clearly a need, speaking as a council member, and in my case, for the State of Maryland, for legislation so that States can develop effective preservation programs for their historic shipwrecks. I believe that one clarification needs to be made in S. 1504. That is to clarify the territories to qualify for the same transfer of authority being discussed in S. 1504.

The council supports S. 1504, but we do believe that some qualifications are necessary to carry out at least the intent of the, that is, some modifications are necessary, to carry out at least the intent of the council's resolution.

Historic shipwrecks are really historic resources. The Federal law right now recognizes certain protections for historic properties.

In the past, the council and State historic preservation officers have dealt with the question of historic shipwrecks over and over again. We dealt with it not with any special mechanisms but through the existing historic preservation mechanisms. When a Federal project might possibly impact on a shipwreck, the shipwreck has been held up against the criteria as to the National Register of Historic Places. If determined eligible, the protection has been turned over to the Advisory Council on Historic Preservation. That system has worked in numerous cases. It has worked extremely well and efficiently.

Quite frankly, I see no reason for treating historic shipwrecks any differently than we treat an archeological site on a land area or a historic building.

There is the need to be sure that the transfer of jurisdiction being talked about does not result in a lack of protection because no systems exist in the State. S. 1504 might not go quite far enough in that direction. We would urge that whatever implementation in the act takes place that it be done consistent with the established processes and principles of the national historic preservation program.

In the House hearings on this particular bill, there was considerable question about what is or is not a historic shipwreck. I would suggest that the criteria of the National Register would work exceedingly well—that is, which has worked exceedingly well over the last 15 years, that they can answer that question. The criteria of the register can be used to define what is a historic shipwreck and what is not.

I believe that there should be reliance, that is, that S. 1504 should be modified to stress reliance on a flexible State process for the identification and protection of historic property. There needs to be clear-cut language that specifies Federal protection for shipwrecks, for historic shipwrecks, on the Outer Continental Shelf.

The real problem to be addressed here is the intelligent management of these historic resources with primary reliance on the States in a flexible manner that balances the preservation interests of the entire Nation with those of sport divers, salvors in a simple and easy to administer system.

As the preservation officer from Maryland, I can attest to the need for this and to the problems associated with handling shipwrecks under current admiralty law. The State of Maryland has found it, that is, found itself in court now on several occasions in attempts to protect historic shipwrecks in Maryland waters. The substitution of the admiralty law process for the National Historic Preservation Act process simply creates a burdensome process, a process which requires ultimately litigation in each specific case that comes up. The national historic preservation program, instead, treats the real problem we have here.

The reason for Federal interest in historic shipwrecks is not because they are shipwrecks. It is because they are historic resources which happen to be shipwrecks. The law is very clear about how we treat historic resources. I would urge that 1504 be modified in such a way to allow for the existing system, the existing infrastructure that has already been built up, to operate in an efficient manner.

Thank you, Mr. Chairman.

[The prepared statement submitted by the Advisory Council on Historic Preservation follows:]

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

TESTIMONY OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

ON S. 1504

BEFORE THE U. S. SENATE COMMITTEE ON ENERGY AND

NATURAL RESOURCES

October 21, 1983

Introduction

The Advisory Council on Historic Preservation, created by Section 201 of the National Historic Preservation Act of 1966, as amended, is charged by Section 202 of the same act to:

> "...advise the President and the Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State and local agencies and private institutions and individuals relating to historic preservation, and advise on the dissemination of information pertaining to such activities."

It is on the basis of this responsibility that the following recommendations are offered.

The Senate is considering S. 1504, a bill designed to protect historic shipwrecks. At the Council's meeting on August 30, 1983, the members unanimously adopted the following resolution pertaining to this bill:

> "Recognizing that historic shipwrecks are a part of the Nation's patrimony, the Advisory Council on Historic Preservation supports legislative clarification of laws affecting shipwrecks listed in or determined eligible for the National Register of Historic Places. The Council urges, however, that any such legislative actions include historic shipwrecks in a manner consistent with the National Historic Preservation Program and its procedures and intergovernmental relationships."

Underlying this resolution is the belief that the primary characteristic of historic shipwrecks is their identity with the broad range of properties that make up the nation's patrimony, regardless of whether located on land or under the sea. Maritime resources have attained substantial recognition over the past few years as an important part of our heritage. Likewise, those ships lying beneath the waters of the United States warrant recognition and protection in the same basic manner as comparable historic properties located on dry land. This principle should guide the formulation of any legislation dealing with the protection of historic shipwrecks.

It is in accordance with that principle and the foregoing resolution that the Council offers the following views on the legislation now under consideration. We have focused on a number of primary issues that must be resolved in the creation of useful legislation.

1. Definition of the Historic Quality of Shipwrecks

A basic question for any form of protective legislation is that of defining the range of entities to be protected. In the case of shipwrecks, this boils down to distinguishing those wrecks that are historic from those that are not.

The Council believes that protection should be afforded only to those shipwrecks that meet the criteria of significance that have been established for the National historic preservation program. These criteria are the

ones established to evaluate properties for listing on the National Register of Historic Places and should be used to determine which shipwrecks are historic. These criteria are used throughout the Federal government to guide the application of legal protections and financial assistance. Administered by the States, they are the basic standards of historic significance in the National Historic Preservation Program. The Council would recommend strongly against establishing criteria that diverge from those of the National Register, as doing so would inevitably promote confusion and administrative complexity. Developing new criteria would be an unnecessary and expensive exercise, particularly when one considers that the National Register currently lists numerous historic ships and historic shipwrecks, demonstrating the viability of the National Register criteria for use in the legislation before the Committee.

2. Management of Shipwrecks by the States

S. 1504 provides for the transfer of control and management of shipwrecks from the Federal government to the States. State historic preservation programs are integral to the national historic preservation system, so in principle the Council supports this approach. At the same time, however, the Council believes that the paramount goal of this legislation should be the protection of historic shipwrecks from destructive exploitation, consistent with the National Historic Preservation Policy set forth in Section 2 of the National Historic Preservation Act. This objective will not be achieved if ownership or management of historic shipwrecks is transferred to States where no protective mechanism exists. Accordingly, the Council believes that transfer of ownership should be predicated on the existence of an appropriate management system administered by the State.

The variety of State legal systems and administrative practices argues for an approach that permits flexibility while ensuring that the objective of a sound preservation management system is met. The Council's experience with negotiating agreements on Federal projects and programs indicates that individual Federal-State agreements may offer a more desirable approach than rigid national standards or formal State plan approval.

While we believe a protective system for historic shipwrecks should exist as part of the broader State historic preservation program, there are certain considerations unique to the nature of the resource that must be accommodated. Shipwrecks provide a recreational opportunity that need not be inhibited by the effort to protect historic values. The development of any administrative system to protect historic shipwrecks should recognize the legitimate and non-destructive activities of those who enjoy the resources primarily for recreation.

Likewise, the tradition of the law of salvage and the legitimate notion of compensating those who recover artifacts otherwise lost to the sea merit reflection in the protective system. Not all artifacts recovered from historic shipwrecks warrant retention by a public preservation authority. Similarly, the public receives a benefit when a private party discovers a historic shipwreck or retrieves historically valuable materials or information. A system to provide for a fair, professional judgment on compensation, monetarily or by retention of artifacts, merits consideration

as a required feature of State protection programs. However, this should be an administrative system, not one relying on the courts, which are ill-equipped to make judgments on historic value.

Another area where the Council sees a limitation on State authority to be appropriate is where there may be a conflict with Federal processes to protect historic properties. Where historic shipwrecks are on submerged lands subject to Federal ownership or control, the protective requirements found in Sections 106 and 110 of the National Historic Perservation Act apply. The new legislation should not create a situation where State law and Federal law will conflict.

3. Management of Shipwrecks Beyond State Control

The Council believes it is important that this legislation provide comparable protections for historic shipwrecks outside State control but still within the jurisdiction of the United States. To administer such protection it would of course be appropriate to have a Federal agency duly authorized.

The Federal agency that should be given authority to regulate the use of historic shipwrecks beyond the territorial sea may depend on the nature of the protection or regulation covering such wrecks. A permit-type approach, like that embodied in the Archeological Resources Protection Act of 1979, might best be entrusted to an agency with management responsibility for the area in question. Alternatively, a program similar to the Marine Sanctuaries program administered by the Department of Commerce might be appropriate. Otherwise, the Council's experience in administering the consultation and comment process established under Section 106 of the National Historic Preservation Act would qualify it to administer a similar system for historic shipwrecks.

4. Use of Admiralty Law and the Courts

It has been suggested that minor modifications to existing Federal law governing salvage could solve the problem. The Council strongly recommends against seeking to protect historic shipwrecks through the use of admiralty law. To do so would create a unique and, we believe, a cumbersome and ineffective protective system for a class of historic properties that should be dealt with in accordance with the established principles of the National Historic Preservation Program. While the unique attributes of historic shipwrecks must be reflected in the protective system established, to rely on admiralty law to ensure proper management of part of the nation's patrimony is inconsistent with the basic policies and mechanisms that have evolved over the past 75 years in the historic preservation field.

On the whole, the Council would urge that the legislation minimize reliance on litigants and the court. We have concluded from our experience with the Federal historic perservation protective process that the public interest is best served by a system which clearly defines the limits of acceptable activity within a flexible framework. To place the burden of enforcement on the judicial system is inconsistent with the underlying philosophy of the protections found in the National Historic Preservation Program. We believe it is an inappropriate way to protect the public interest in historic properties, as it substitutes licigation and adversarial proceedings for what is routine administrative decisionmaking in all other parts of the

preservation program. The cost, in confusion, delay, money and loss of significant properties, outweighs any benefits to be derived from such an approach.

Summary and Conclusion

In summary, the Council favors a program to manage and protect historic shipwrecks that is fully integrated with the existing planning and protective system created by the National Historic Preservation Act and related statues. Such a program should give strong emphasis to State authority over shipwrecks, but provide a flexible mechanism for Federal oversight of and negotiation with States to ensure that their protective systems are sufficient. It should minimize reliance on the courts, and maximize the use of negotiation, to settle disputes, and it should provide a mechanism for regulating the use of wrecks not under State authority that is comparable with that covering wrecks within the territorial sea.

A system of this kind would allow the balancing of the public interests in shipwrecks preservation with those in recreational diving, salvage and treasure hunting, and be fully consistent with the national policies articulated in Section 2 of the National Historic Preservation Act.

Senator WALLOP. Thank you for your oral statement, Mr. Little.

Mr. Fowler, do you have a statement?

Mr. FOWLER. I don't have a prepared statement, Mr. Chairman.

Senator WALLOP. Let me ask this because I don't know. Can the commercial salvage operators, either professional or the skilled amateurs, be of assistance or must they be cut out of the circle altogether?

Mr. FOWLER. Captain Allendorfer.

Captain ALLENDORFER. We feel very strongly and we have done some work in this area with a number of people, and it is that the commercial salvage people and sport divers could be great assests if this is properly done. In the case of the salvage people, some of them do. You have got to realize that there are salvage people who realize that it is very important to do an archeological study at the site of the find before they wreck it. If, for no other reason, it makes it more valuable if you know what it is as opposed to just a piece of junk that came up from the bottom.

The same thing is with the sport divers. Where we made inroads and got together with the sport diving associations, we then convinced them that they can help the archeologists by their capability of being able to go down. There is no question in my mind but that there is certainly an area for a complete cooperation between the people that want to cooperate and want to understand.

Mr. LITTLE. If I might add this.

Captain ALLENDORFER. Yes.

Senator WALLOP. Mr. Little.

Mr. LITTLE. Some States may wish to carry out the majority of the shipwreck excavations themselves, like the State of Texas, which has a very large and well-funded program in that area. However, I think that the majority of the seaboard States would rely, for most of the items, most of the identification and most of the salvage, on commercial salvagers and sport divers.

Our real concern, speaking now for the State of Maryland, is not a desire necessarily to own those shipwrecks or to absolutely control what comes off of them, but rather to be sure that they are excavated and salvaged properly so that irreplaceable information that is there on the bottom on of the sea is not lost to the general public. I think that is our primary concern.

Captain ALLENDORFER. Yes.

Mr. LITTLE. Thank you.

Senator WALLOP. Well, then, I gather by your answer, that there are at least some circumstances in which they have contributed to the historic and archeological knowledge by their existence. The one thing that occurs to me, as I know enough about government, both State and national, to know that there is not a capability or the funding to properly do all of these things, and, indeed, there probably wouldn't be any knowledge of them other than peripheral had it not been for those who are engaged in the business or the sport of sunken treasure hunting.

I guess my little caution alarm that is going on in the back of my head is that we don't want to cut out one thing that makes it possible to expand your capabilities. The States just don't have that much money. Neither does the Federal Government to do all of these things. If you don't involve the others, then everybody loses.

Mr. LITTLE. Mr. Chairman.

Senator WALLOP. Mr. Little.

Mr. LITTLE. I believe that the majority of the officers would agree with that sentiment. Clearly, the commercial salvagers are not all devils. Many of them have done very good and very responsible salvage work.

However, there are those who go in and dynamite a site and go over it with a magnetometer to pick up only the metals, because that is what they are interested in, the precious metals, and that is the kind of thing that we seek to try to control. It is clear and simple.

Senator WALLOP. Captain.

Captain ALLENDORFER. As a good example of how this works, Mr. Chairman, that is, if it happens to be on land, that, in New York City you may have read that about 2 years ago on Water Street a developer was working on building a great, giant new skyscraper. The New York City law, which is very strong on historic preservation, requires that a developer, at his own expense, do certain archeological exploration of a site before he actually destroys it. In that process, it is finding the little old bottles and things.

All of a sudden, low and behold, they came across a ship which turned out to be the oldest ship ever found in the United States. Immediately, everything stopped. We got together with him. To make a long story short, the pieces of that ship that were retrievable are now being conserved and they ultimately will be displayed at his expense. So, he, in effect, is a treasure hunter, if you will, and developer. There is no reason why that can't work for ships.

Senator WALLOP. I guess, in realizing certain levels of human nature, that the commercial people are going to have to be able to succeed or they won't be out there entirely to your benefit.

It strikes me that, as we work on this stuff, that one of the things that is better is to cut them into the circle rather than out of it because as you probably would have less damage and more knowledge for that very reason.

If, for example, you came across something and that you knew that it was going to cost you rather than to reward you, you might do everything that you could to keep that information from becoming public.

Go ahead, Captain.

Captain ALLENDORFER. In connection with the *Monitor*, Jacques Cousteau was making a commercial underwater film of underwater shipwrecks. He came to know, that is, to get permission to photograph the *Monitor*. That was submitted to a technical review board which technically looked at his plans, where you can anchor things, and so forth, and recommended some modifications, with that anchor upstream rather than downstream. Then it was passed up to a Federal review board, of which I happened to be a member, and we finally ended up approving Cousteau's plan to go out there. He went out and did his work. So, it can happen.

Senator WALLOP. But that is different from what I am talking about. I am assuming that you are out there and you come across something that has not been found before. If the law is so stringent out there, there is going to be no opportunity at the time for the person to get some actual compensation if he wants it. There are

some who would not. I grant you that. I am talking about somebody who would. It strikes me that if the law is so strict there is not going to be any way in which this work can take place, you are likely, (a) to not know of it until it is too late, and (b) to have it exploited if it can be done secretly. I just think to cut them into the circle rather than out of the circle is a piece of commonsense.

Go ahead, Mr. Little.

Mr. LITTLE. The manner in which we implemented our legislation in Maryland clearly cuts the salvors into this.

Our major concern, as I said, is to be able to guide the manner in which they do it to assure that the information and artifacts are not lost.

However, the process that is proposed in S. 1504 is, essentially, a transfer of ownership of shipwrecks. I think that, speaking for States like Texas, which have done an awful lot of excavation themselves, that this process is a very useful one because, on occasion, a shipwreck may be discovered which is so significant that the State may, in fact, want to step in and salvage it itself or to compensate the salvager for doing it. There are artifacts sometimes that are of such significance that they do belong in the public domain.

In the State of Maryland in our research we have identified one shipwreck, which I am not prepared to disclose the location of——

Senator WALLOP. Do it on TV.

Captain ALLENDORFER. Go ahead.

Mr. LITTLE. But we discovered one shipwreck which, if our data about it is verified through excavation, that this will change the entire history of the exploration of North America. That is tantalizing.

Senator WALLOP. I would suggest, from a historian's standpoint, it won't change the history but it will change our knowledge and understanding.

Mr. LITTLE. Yes. Thank you very much.

Senator WALLOP. Go ahead.

Mr. LITTLE. It will change our interpretation of the history.

Basically, we have found 16th century evidence of Spanish penetration into the Chesapeake Bay, something which is not supposed to have happened.

Senator WALLOP. I don't know who it was, but I think it was Aristotle who said that money from God can change history. It is one of the few areas where there is some sort of persistent relevance.

Senator Hecht, do you have questions?

Senator HECHT. Thank you all very much. No questions.

Senator WALLOP. Thank you all for your testimony.

Next is Mr. Mel Fisher, Treasure Salvors, Inc.

STATEMENT OF MELVIN A. FISHER, PRESIDENT, TREASURE SALVORS, INC., AND COBB COIN CO., INC.

Mr. FISHER. Thank you, Mr. Chairman.

Senator WALLOP. I think, Mr. Fisher, when I saw you across the room, that we had a cleric here.

Please proceed, Mr. Fisher.

Mr. FISHER. Well, I've been accused of dynamiting shipwrecks and destroying history, but it is pretty obvious that I am a pretty religious guy.

I am here all by myself up front. Really, I am sure that I represent millions of Americans. I have had, Mr. Chairman, literally millions of people come up to me and say, "I just want to shake your hand. You stood up against the Federal Government and the Supreme Court and the State of Florida. You won. The reason that you won is because you were right."

I have tens of thousands of signed statements from people from all over the country saying, "We don't want any new legislation." I can present them to you if you wish, Mr. Chairman.

The Government has no business in the salvage business. Florida tried it. In one of these papers they accused the private salvors of destroying the *San Jose* galleon. That was an untrue statement. I first located the ship. It was completely covered with sand. I signed a contract with Mr. McArthur in Palm Beach, where he was going to pay me a quarter of a million dollars to preserve the hull as a museum. He gave me $50,000. I uncovered the hull by hand and removed every stone.

Then the State of Florida moved in. They said that they owned it even though it was outside the State. So they made me give the $50,000 payment back to Mr. McArthur. They then refused to let me preserve the ship. The State then moved in and destroyed it. The State did this.

Senator WALLOP. When you say destroyed, what do you mean?

Mr. FISHER. They don't have any expertise and know-how in property budgeting and equipment. It takes a lot of fancy equipment to do it properly. They just went in and they tore it all to pieces.

Now, we had already brought up most of the valuable artifacts and turned them over to the State, but they said they wanted to take over this themselves, that they would give us half the funds, that is, half of the things that we found. They never did it. They just kept it for years, years, and years. The man that worked with me on it was put out of business because of this. They had him jailed, like they did me. This completely wiped him out. Tom Gerr was his name.

The *Espiritu Santo* that they are talking about in Texas, or were a few minutes ago, well, a friend of mine did that salvage.

Then the State troopers from Texas went to Indiana and took the treasure away from him. On the way back to Texas, two-thirds of the treasure disappeared while it was in the hands of the State officers.

Florida did the same thing to me. I turned over millions of dollars worth of beautiful things. When they went to have a division with me, hundreds, even thousands of things, were missing, including emeralds. They said that the emeralds were destroyed in the cleaning. I don't see how they can say that.

Our forefathers created not only the Constitution of the United States, but they created the admiralty law similar to the Constitution. This deals with shipwrecks specifically.

The Constitution says that shipwrecks; that is, that the States do not have jurisdiction pertaining to shipwrecks. So, before you're

going to consider a law, you have to consider amending the constitution. Admiralty law handles shipwreck problems excellently.

I have been in the courts for several years. There were dozens of hearings and cases. At every hearing and at every case; that is, we have won every hearing and every case because we are right. The States and the Government were wrong.

The admiralty law is very fair. If you read Judge King's opinion, the opinion that came out not too long ago, you'll find it is very fair to all parties, including the State. It gives the State their share of the artifacts. All problems had been resolved between myself and Florida. Even after I won in the Supreme Court of the United States I still went to them and came to a written agreement wherein we could work together. We do donate roughly a fifth of everything that we find to the State for their museums. We turn over all the archeological data and historical data to the States.

I think that admiralty law is working wonderful. That is the way that Washington, Adams, and Jefferson and those guys set it up. It is working good. Nobody dynamites shipwrecks. I have heard that referred to several times. It is just ridiculous. It would destroy everything. The magnetometers don't find gold and silver. There are a lot of people here making statements about which they are not informed. It is unfortunate.

The Federal Government and the States have a right under admiralty law to arrest a shipwreck if they do desire, just as an individual does. If they want to salvage the *Monitor,* they can file an admiralty claim in admiralty court. They can salvage the *Monitor.* No one else can move in on them and steal it, so to speak.

No plundering has been done. Plundering is an awful word, like a bunch of pirates moving in on a village and taking all the treasure.

The people that do this kind of work are so heavy into archeology that it is awe-consuming.

I don't do this for money. I don't believe the other people like me do it for money either. It is because it is our life and the thing that we want to do.

Now, 136 nations got together a while back and they agreed on something. They signed a treaty. If you can imagine getting 136 Nations to agree on anything, you know it must be true. They all agreed that shipwrecks and bullion lying on the subsea floor does not belong to the States or the Nations. It belongs to the salvor and the finder because he has to go through very dangerous and expensive work. The ocean takes ships and men. It is very dangerous. It has taken some of my ships and men. We wouldn't be risking our lives if there was no reward. The reward is being able to show these objects to the whole world. We have exhibitions all over the country. We have had exhibitions in Australia and New Zealand. We plan to have more exhibits all over the world.

Some of you think that we are destroying a shipwreck. Most of these shipwrecks, by the way, and I want to explain to you, that they are not even there. You can't see them. In 9 out of 10 of these Spanish galleons, they are gone. There is nothing to destroy. The worms ate up all the wood. There is no ship there. They are scattered out for miles and miles. There are no sails. There is no stern castle sticking up. There are no masts. There is absolutely nothing

visible. It is scattered out for maybe 3, 4, or 5 miles. There are objects that were on the ship. It is not a ship.

As far as studying the way that ships were constructed back then, if you do good research, all of this information is already available. We have complete plans that were used by the Spaniards to build the *Atocha*. We know the size of every timber and how every joint was merged together. We have done research for more than 12 years full time with several historians all over the world on ancient shipwrecks. We have written more papers and historic documents and books on the matters of archeology and history than all the States and the Federal Government put together. We have educated the general public about how history came about here. I could go ahead and read my paper here, but I guess that I will just let you read it yourself. I advise you to read Judge King's opinion here.

I am not here representing treasure hunters, but everybody, or most everybody read Treasure Island and every kid has a dream of going out looking for treasure. I don't think that you should take that dream away with the stroke of a pen. If there are any questions, I'll answer them.

[The prepared statement of Mr. Fisher follows:]

SENATE COMMITTEE TESTIMONY

PRESENTED BY

MELVIN A. FISHER,

PRESIDENT

TREASURE SALVORS, INC.

AND

COBB COIN COMPANY, INC.

OCTOBER 21, 1984

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SENATE COMMITTEE PRESENTATION BY
TREASURE SALVORS, INC.
AND
COBB COIN COMPANY, INC.

October 21, 1983

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

In July of 1979, **Newsweek Magazine** named me as one of the ten (10) living American Heroes. I am nothing more and nothing less than the little guy that stood up the federal and state government and beat it. The original litigation with the United States started in 1975 and the Supreme Court of the United States ultimately resolved the matter on July 1st, 1982. After all this time and after and all this litigation, the little guy prevailed and now government, with the stroke of a pen and this pending legislation will wipe out the little guy once and for all. It happens that my endeavors that brought me this recognition have also brought me to testify before this Committee today. Now is certainly not the time to be humble or reserved in my comments.

During the past ten (10) years, I have raised nearly Seven Million ($7,000,000.00) Dollars in private risk capital. I have averaged nearly fifty (50) employees and contributed over a Half Million ($500,000.00+) Dollars a year to the economy of the Florida Keys. I have employed archeologists and historians; done research in the Archives of the Indies in Seville, Spain; and logged well over a Quarter of a Million (250,000+) miles in search vessels looking for, finding and salvaging two (2) Spanish Galleons that sank on September 5th, 1622. Through my efforts and the efforts of the private

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investors that have made it all possible, there has been more history and more archeology done than by all of the other shipwreck archeologists in this country put together. The American people have experienced this archeology and this history and this thrill of adventure through various demographic sources such as the hour long television special by National Geographic, two (2) seperate articles in **National Geographic Magazine** and literally hundreds of other articles in different magazines and publications.

Every single bit of this has been done with private risk capital and using private initiative. Not one penny of federal or state revenues have contributed to this search and salvage operation or to the archeology and history that has been carried out and presented, not only to the American people, but to the people of the world.

I am sure that this Committee has had various bills dealing with protection of endangered species before it, but rarely have you been in the position of considering a Bill that would insure the complete eradication of an already endangered species. I am a modern, private salvor using private initiative and private risk capital. . . this proposed legislation would insure that no longer would private initiative and private risk capital be rewarded by the Federal Admiralty Courts as I have so laboriously established over the past ten (10) years. What this Bill will do is insure the continued survival and proliferation of bureaucrats and more and more administrative rules that will surely choke off and permanently eradicate private risk capital and private initiative that has so successfully in the past insured the protection of the real public interest in ancient, historic shipwrecks.

Is there really any need for this legislation? Where can you find an authoritative, unbiased text that is going to help you in your deliberations on this proposed legislation? Well, in my hand is an eighty-five (85) page explanation of the very issues that you are considering today. It was prepared by Judge James Lawrence King of the United States District Court for the Southern District of Florida. This published Opinion reads like a novel. It is anything but dry and boring. It is exciting and it is factual. To ultimately establish this Opinion as the Admiralty Law of the United States took me eight (8) years of litigation and nearly One Million ($1,000,000.00) Dollars in fees and costs. The bureaucrats and the very people that are pushing this proposed legislation spent well in excess of Twenty Million ($20,000,000.00) Dollars of the American People's money in a failing effort to take the salvage away from the private salvors and the private investors that made it all possible. This Opinion thoroughly examines the results of over fifteen (15) years of state regulation of historic shipwrecks which the proposed legislation would guarantee.

Because of cost considerations, I didn't bring my attorney, DAVID PAUL HORAN up here with me today, but I am sure that he would tell you that Article III, Section 2 of the United States Constitution insures that the Federal District Courts shall have exclusive jurisdiction of admiralty and maritime claims. There certainly can be no doubt that salvage of a shipwreck is a uniquely maritime claim. As a result of thousands of pages of pleadings and weeks of sworn testimony, the Federal Court found as follows, and I quote:

"Equally impressive are the efforts of Cobb Coin employees to record the rich, valuable, historical, archeological information concerning the exact location, depth and proximity of each item found with respect to other items. This information is known in the underwater archeological field as provenience data. As this Court noted in its October 81 Injunction Order, the provenience data is important not only to historians and archeologists and anthropologists, but it documents the authenticity and thus enhances the retail value of these otherwise precious artifacts.

* * * * * * *

Although it is obviously in the salvor's better interest to document provenience on ancient shipwrecks, it is not clear whether the value to the salvor of this provenience data will, with certainty, justify the cost of maintaining qualified marine archeologists on the site. This Court now holds that in order to state a claim for salvage or an award on an ancient vessel of historical and archeological significance, it is essential that the salvors document the archeological provenience of the shipwreck.

* * * * * * * *

> To leave this element merely for consideration of a salvage award would not provide sufficient incentive to salvors to insure that the information is obtained. Accordingly, this Court holds that by meeting the threshhold requirement, a salvor simultaneously enhances the value of his recovery in such a way as will be explicitly recognized by the Court in the determination of the salvage award."

As to the future role of government with regard to the ongoing admiralty jurisdiction of the Federal District Courts over such salvage activities, the Court held, and I quote:

> "The Division of Archives, History and Records Management has the right to intervene in future salvage award determinations before this Court to assert an interest on behalf of its citizens to particular artifacts recovered which are not represented in its present inventory and which it feels are essential to the preservation of the people's heritage."

I have been shocked and dismayed at some of the so called "information" you have been given by proponants of the proposed legislation. The proponants say that private salvors and private risk capital is guilty of raping and pillaging the wrecksites under the guise of salvage. There have even been assertions that dynamite has been used

to blow up precious artifacts in the salvor's lust for gold and silver and somehow these activities have been sanctioned by the Federal District Courts. I'll challenge you right now to ask every proponant of this legislation to back up those statements. I want to know where the Federal District Court has been involved in the salvage of an ancient historic wreck that, while under the Federal Court's jurisdiction, has been raped and pillaged by private salvors. What you are hearing is the big lie. It is in fact the major tool of the leaders of communistic, and for that matter, all collectivist societies. Karl Marx said, "Any concept, no matter how aborant, if kept in front of the people, will soon be tolerated, then embraced." Mr. Chairman, Members of this Committee, it is the ongoing jurisdiction of the Federal District Court which will insure the finding, salvaging and preservation of historic wrecksites. The rapers and pillagers do not come into the Federal District Court and ask for a salvage award. They do not do the archeology and the history which is necessitated by the Federal Courts. If you attempt to take the admiralty jurisdiction away from the Federal Courts with regard to ancient historic vessels, I can assure you that private salvors will no longer be able to spend the time, effort and private risk capital to go out, find and salvage ancient vessels. However, when one is found, even by accident, there will be no incentive to divulge the wrecksite's location to the authorities; there will be no incentive to recover artifacts while documenting their provenience data; and, there will certainly be no incentive to preserve any of these artifacts. The wealth of history and archeology represented by such wrecks will be destroyed and artifacts made of precious metal will be melted down and sold for bullion.

This Federal District Court Opinion is true history. It is a very effective and clear view of the future if this Bill becomes law in 1984. At a time when this country needs to believe that government can be controlled and that private initiative and private enterprise can prevail over bureaucratic fiat, we happen to be in the right place at the right time. We are now on the road to economic and philosphic recovery in this country. More and more people see that big government is the problem and not the solution. Nearly every working American believes that he or she can do their job better without governmental interference and history has proven that we are right.

In closing, I would like to leave you with this thought. A uniform system of federal law and jurisdiction is now in place and must be kept there. The law allows liberal awards to salvors and holds out a continuing incentive to undertake the physical and financial risk entailed in such search and salvage operations, whether they are in the Atlantic, the Pacific or the Gulf. There can be no justification whatsoever for proliferation of state administrative rules that will take the place of this comprehensive and in force system of federal law and jurisdiction. Any attempt to replace our time proven, uniform maritime law should be carefully considered for the chaotic results that are documented in this Federal Court Opinion. The results of the proposed legislation would be extremely deleterious to the maritime law and to the historic resources which are represented by such shipwrecks. You must question why, yet another costly law is being proposed at a time when the federal and state budgets absolutely cannot afford it and when a better and more proven legal structure is already in existance. I am sure that all of you, as well-meaning

elected representatives of your constituents, wish to demonstrate that you are protecting the nations historic resources. While your intentions are well meaning, the need for this proposed legislation is totally non-existant.

If this Sub-Committee feels that there is a need to insure that Judge King's Opinion is codified under the federal law, an alternative to the proposed legislation would be an amendment to the Salvage Act of 1912. These additions to Title 46 of the United States Code would effectively establish the basis for state or federal intervention in salvage actions as well as the necessity for documenting the archeological and historic information represented by an ancient and historic vessel.

Thank you for your attention in this matter and if you have any questions, I would be happy to try to answer them.

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Senator WALLOP. Thank you. I will direct the staff to get that opinion.

Mr. FISHER. I brought 20 copies.

Senator WALLOP. Yes. I appreciate what you are saying. I would just direct the same questions to you as I did to the previous panel. That is, is there not some way in which these two circles can interconnect?

Mr. FISHER. Yes, there is. We have already accomplished that with the State of Florida. This was after we had won in the Federal court. The State agreed, and the attorney general agreed, that they would accept that as an agreed judgment. In Judge King's opinion—well, as to the judgment in his opinion, they all felt it was fair and equitable. That does not have to go again to the appellate court or to the Supreme Court. It is an agreed judgment.

We also appointed a committee made up of State people and private consultants. This committee was drawn up and drew up set rules and regulations for the salvors to go by. It is working very smoothly. We have already had—or, instead of a division of the treasures, we call it gifting. My group donated a cross section of the ships' materials to Florida. They were extremely happy with it. We were, too. We get a tax writeoff. We are contributing to their museums. There is no use in their being greedy and taking it and let us spend all our money and do all the work and take all of the risks. There is a written resolution of the problem already. We don't need any new laws. The admiralty law works beautifully.

Senator WALLOP. When you say the State or the Federal Government could go on the admiralty law and lay a claim to a wreck, historic or otherwise, what is required under admiralty law once you stake or make that claim?

Mr. FISHER. They would not be able to do what this legislation is doing. They could not just say that, "Under admiralty law, I own all the shipwrecks in the ocean."

Senator WALLOP. Well, the *Monitor*, as I understand it, under admiralty law, wouldn't qualify anyway because military ships of the United States—it is a military ship.

Mr. FISHER. Excuse me. Take some other wreck.

Senator WALLOP. Yes.

Mr. FISHER. Like the one the fellow was talking about, whether a Viking or Spanish ship, whatever it is, they merely file in admiralty court, saying they located the ship and they desire to salvage it. Then the judge decides whether to give them a salvage award, title to the shipwreck, or both. Then if somebody comes in and tries to steal something off the shipwreck, then the judge sends the U.S. Marshal out. They put the man in the Federal penitentiary for 4 years if he is guilty. So, this is already set up and it works very well. It is very fair to everyone involved. The State or the Government could work that ship without any problems.

Senator WALLOP. Does it have to have commercial value before you do this?

Mr. FISHER. No, it does not. We are working 13 shipwrecks at the present time. Two of them have nothing of value. Well, they have historical value and archeological value, but no monetary value. We are working these wrecks to preserve and learn about them.

Senator WALLOP. Thank you.

Mr. FISHER. Yes, sir.

Senator HECHT. Mr. Chairman.

Senator WALLOP. Senator.

Senator HECHT. Thank you, Mr. Chairman.

I am from Nevada. We don't have many shipwrecks out there. I was interested in this. I want to commend you for the testimony. I think this is among the finest testimony I have heard since I have been in the Senate.

Mr. FISHER. Thank you.

Senator HECHT. I shall quote you in the future because, certainly, it is something to speak on for free enterprise. I enjoyed it very much.

Mr. FISHER. Thank you, sir.

Senator HECHT. Thank you, Mr. Chairman.

Senator WALLOP. I am not often enough, but sometimes a sport diver myself. We were down diving off of the island of Rioton off Honduras, which is probably not a place to dive much longer. I was just reminded of that when you said that the ships are not always just there sticking out from the bottom. We found a metal rudder off a ship. Then, looking around, we found some square oblong iron ballast blocks. I was certain that my fortune was made. We dove down off the reef and couldn't find anything more. We very nearly got ourselves in trouble. I kept being convinced that we would see these little things sticking out of the sand. We managed to get ourselves down some 225 feet. Not having found this, and deciding it was probably not worth looking for much longer, and we proved to have been quite right, that it was certainly was not worth looking at much longer, so we had a very interesting and eventful trip back to the surface. As amateurs, we nearly started and finished our searching in that one dive, our searching career in that one dive. It was not all in one place. The fortune remains off the coast of Honduras some place.

Mr. FISHER. Yes.

Senator WALLOP. I appreciate your testimony, and as is often the case in hearings, nothing is very easy. I hope that you might, if there is nothing confidential about it, forward a copy of your agreement with the State of Florida to the committee.

Mr. FISHER. Sure. I would be glad to.

Senator WALLOP. Thank you.

Mr. FISHER. Also the guidelines which have been drafted.

Senator WALLOP. Yes.

Mr. FISHER. This is wherein private free enterprise can cooperate with the Government.

Senator WALLOP. While there is a public interest in historical things and archeological findings and artifacts, but it just seems to me that there ought to be some way that or where those events can connect to the general benefit and that we don't lose them by being so restrictive that no one will inform us of findings of that nature. Even worse, the public bodies which have a hard time raising money, that this will leave those events really unexplored.

There was the testimony of Dr. Foster about the time urgency of these events. This ought to come into this thinking as well. I am not quite sure how because I don't know, but I think that those

who do know ought to be able to work together and provide us with this.

There is one last question.

Mr. FISHER. Yes, sir.

Senator WALLOP. What would happen to the artifacts that you own and those in the process of conservation and the materials if your company went bankrupt? I am not suggesting that you are about to.

Mr. FISHER. No. We can't go bankrupt because we got too many assets.

Senator WALLOP. How about a company such as your company that has not got so many assets, what would happen to them?

Mr. FISHER. Well, I would like to invite you all down to Key West where we have a magnificent museum and exhibit. After I die or the comapny goes bankrupt, it will keep on going. It will be a non-profit society, something like the Cousteau Society only the Mel Fisher Society on Maritime Heritage. It will be an ongoing museum forever for all our grandchildren to study. People are coming from all over the world right now to Key West to learn and study, students and scholars, about the things that we have done.

Senator WALLOP. If a smaller company had acquired through their salvage work a significant number of artifacts, but——

Mr. FISHER. Excuse me. Most of these things end up in museums. Sometimes they are given out to investors or stock holders. But usually, for one reason or another, maybe they need a tax writeoff, so they will donate them. It is like the University of Delaware right now. They have several million dollars worth of beautiful things in their museum that I recovered. I didn't give them to Delaware, but the people that invested with me did. This is so that they could have a tax writeoff. That is gifting. Most of it ends up in public museums.

Senator WALLOP. Thank you very much.

Senator HECHT. No further questions.

Senator WALLOP. I appreciate your testimony,

The next panel today, that I am delighted to introduce, consists of Dr. George Frison, who, according to the list, is president, Society for American Archeology, but we, in Wyoming, know him much better and in more comfortable terms at the University of Wyoming as one of the premier Western archeologists He has been a friend of mine for a long time, a man whom I greatly admire.

We have Dr. Fred Wendorf, Department of Anthropology, SMU, Dallas, Tex.

George, welcome here. I'm happy to see you this morning.

STATEMENT OF DR. GEORGE C. FRISON, PRESIDENT, SOCIETY FOR AMERICAN ARCHEOLOGY

Dr. FRISON. Thank you, Mr. Chairman.

We are pleased to have the opportunity to be here.

Senator WALLOP. George, these microphones are just absolutely outragous. They have to be snug right up to your mouth. Then not even the microphone can hear it. That is better. Thank you.

Dr. FRISON. We are very pleased to appear on behalf of the Society for American Archeology. I have a very short statement. If it is all right, I will just read it.

The bylaws of the Society for American Archeology state very clearly the objectives to be sought by its membership.

Now these include among those promoting and encouraging the scientific study of archeology, the advocation and aiding in the conservation or archeological data and the discouraging of commercialism in the archeology, that is, of archeological data and——

Senator WALLOP. Please move the mike a little closer, George.

Dr. FRISON. That is the discouraging of commercialism in the archeological field and to work for its elimination.

The bylaws further state that the practice of collecting, hoarding, exchanging, buying or selling of archeological materials for the sole purpose of personal satisfaction or financial gain and the indiscriminate excavation of archeological sites are contrary to the ideals and objects of the Society for American Archeology.

Now, treasure hunting, in connection with shipwrecks clearly falls within the category of activities discouraged by the society.

The data of archeology are among the most threatened of our natural resources. Archeological resources are finite and nonrenewable. Management of these resources demands that the maximum data be derived from their exploitation. This places a further demand that a share of the resources be preserved for future study when better methods of investigation and analysis, along with a new crop of intestigators will be with us.

We would have a difficult time, indeed, explaining and justifying to students in the future just why the data base of archeology was destroyed through the personal and selfish interests of a few who were seeking objects for personal satisfaction and gain while being allowed to ignore the recording of the data that are the subject matter of the study of archeology.

The society strongly supports the passage of the Shipwreck Preservation Act. We do not have the time to educate a new generation in the value of cultural resources. Instead, strong sanctions are needed very soon in order to protect underwater archeological resources similar to those rules and regulations now in effect on Federal and most State lands. Without this protection we will soon lose the resource.

I would like to say this. Although underwater archeology is out of my area, I would like to offer an analogy or two from my own experience. This is from my own plāins archeology.

The Powder River Basin in Wyoming is one of the most heavily impacted areas through primary energy impacted areas through primary energy extraction.

Federal regulations required an on-the-ground survey which resulted in the discovery of a stratified Paleoindian site that was being looted. Subsequent investigations proved this site to be of extremely high value in interpreting the pre-history of the Powder River Basin. Without strong regulations for archeological resources, the data would have been lost. Numerous other similar examples can be cited, Mr. Chairman. I could cite dozens of other similar examples of this.

Recently in the news, a historic Indian burial in Western Wyoming was looted that contained large amounts of material of collecting quality, including a 19th century firearm that was almost immediately sold for an exorbitant price. The partially mummified body was then strung from a flagpole in a small Western Wyoming town. The site was on Federal land and they are thereby subject to prosecution for this kind of reprehensible behavior.

Even so, a good deal of valuable data is lost concerning this little known period of history of the West. This kind of behavior is no longer acceptable in a civilized society and strong sanctions are needed to curb further similar action.

I would like to add that, in my experience, and in many other archeologists' experience, we have been able to educate collectors to this so that they become a valuable adjunct to the professionals. Most of these individuals can be convinced that the recovery of good scientific data is every bit as rewarding as the satisfaction that comes from the urge to collect.

I think that S. 1504 can become an impetus toward this end. I think in remembering that we are concerned then here with the management of cultural resources, that we need the help and cooperation of everyone possible.

I thank you, Mr. Chairman.

STATEMENT OF DR. FRED WENDORF, DEPARTMENT OF ANTHROPOLOGY, SOUTHERN METHODIST UNIVERSITY

Dr. WENDORF. Thank you very much, Mr. Chairman.

We are here today primarily because of the Submerged Land Act of 1953. This failed to mention historic shipwrecks and it gave control over the the resources on submerged lands to the States.

There has been another point. Since it failed to mention historic shipwrecks, the courts have failed to recognize the public's interest and the importance of historic shipwrecks to the public and have applied the law of salvage to the area of historic shipwrecks and have allowed them to be looted under the guise of salvage. These really are the problems that we are trying to correct with S. 1504. The historic shipwrecks are fragile and irreplaceable parts of our heritage which should be protected for the benefit of the American public. The looting of historic shipwrecks by organized treasure hunting firms has become a significant national problem in spite of State and Federal efforts to protect this heritage because the courts in several recent decisions have placed historic shipwrecks under the salvage provisions of maritime law.

It is the intent of S. 1504 to remove the historic shipwrecks from the maritime law, that is, from the maritime law of salvage, and to place their management and protection in the hands of the States. This is for those shipwrecks that would occur on and within State lands, and for the Department of the Interior for those and other lands of the United States.

The treasure hunters have aroused the fears of scuba divers with the bill in that it would restrict their freedom. I respond that this is really a red herring because their freedom is not threatened. It is not the purpose of this bill to restrict access to submerged lands by scuba divers or other members of the public, nor to punish those

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who happen to find a stray coin or artifact on the floor of the ocean.

I want to remind you of what Mr. Fisher said. Most of these historic shipwrecks that we are trying to protect can't be found. You find nothing there. If an occasional coin is found, that is not what we are after. What we are trying to protect are those shipwrecks that are gotten at by expensive equipment brought in. You find them with magnetometers. You have to bring in expensive equipment in order to blow holes in the bottom of the ocean in order to uncover them. It is this particular behavior that we are trying to restrict.

I can speak with some authority on this point because I am a scuba diver, just like you, Senator. So are several other members of my family. Also, for the past 13 years, I have been a citizen member and chairman of the Texas State Antiquities Committee. This group is charged with the administration of the Texas antiquities code to protect all antiquities on Texas land, including historic shipwrecks.

During this period, 13 years, while I have been the only chairman, no scuba diver in Texas has ever been prevented from diving on a wreck or in anyway had his sports diving activity restricted by the antiquities committee. The committee would continue to function in the same way with regard to the scuba divers.

The treasure hunters are not interested in the freedom of the divers, but they are only interested in their own freedom to loot and destroy with impunity the very wrecks that the scuba divers enjoy so much.

What are we really talking about here? The typical treasure hunter organizes a company with a series of limited partners whose major interest is to find some treasure to make a profit. They will locate a ship, bring in a barge and other large equipment to blast into the ocean floor. They will grab the items that can be readily sold on the antiquities market. These are the typical ones. I am not saying that they are all this way. They leave the remnants of the ship and the rest of its contents to be destroyed by the currents and the creatures of the sea. No records are made about the arrangements of the artifacts on the ship or the details of its construction or any other bits of information that we could use to reconstruct as to how the ship was made, how it functioned, what life was like on board.

I might say that this is exactly what happened in Texas. These are precisely the events that happened. Artifacts from the ship were sold or disappeared in the collections of the investors of the company. In any case their scientific and historical integrity is lost forever. Just because they may eventually end up back in a museum years and years later does not restore their historical integrity.

It is not really the artifacts. It is not precisely the artifacts that are the most valuable in the sense of art or in the sense of gold or silver that are necessarily of the greatest historical significance to us.

Contrast this with the *San Esteban*, a Spanish ship that went down off Padre Island in 1554. This ship was excavated in 1973 by my friend over here on the right, who is an underwater archeolo-

gist and who, by the way, does all the other things that underwater archeologists do, but he doesn't do it for wealth. He does it for knowledge.

Now, a map was made, artifacts were carefully plotted on the map before their removal so that their position relative to the other artifacts and the structural features of the ship could be determined. Every artifact was recovered, not just those of potential value on the antiquities market, but the cannons, tools, anchors, silver coins, boots, screws, the fragments of pottery and hundreds of other items all of which testified as to the life on board the ship and as to the cargo that it carried. All the artifacts, including the remaining parts of the ship underwent a long and expensive process of preservation in a specially constructed laboratory.

The most complex preservation effort and the most costly was the ship's keel. Despite statements to the contrary by the treasure hunters, we know almost nothing about the size, shape and construction of the pre-18th century ships. We now, however, for the first time, have real evidence about the construction of the ships used by the Spanish during the early exploration of the New World.

A long search of the Spanish archives eventually located the shipping manifest in the 1554 fleet and the records of their salvage efforts a few months after the wreck occurred.

Now, all of this was, this data, was made available to the public through a series of publications. A movie of the preservation effort was shown to millions of viewers through public television and to countless others through loans of the film to schools and clubs. A major exhibit on the shipwreck and its contents was constructed and shown free to the public at more than 20 public museums throughout the State of Texas and elsewhere in the United States. Hundreds of thousands, perhaps millions of museum visitors have seen and marveled at these treasures and at the story they tell. A small traveling exhibit was built and circulated to schools throughout the State. Millions of Texas children now have a better understanding of our past.

Finally, the collection will become a central focus of a new museum soon to be built by the city of Corpus Christi, Tex., only a few miles from the scene of the original wreck in 1554. I might indicate that the $1.5 million was raised privately in the city of Corpus Christi for the purpose of constructing this museum to house this collection.

Now, all of this has cost the State of Texas a considerable amount of money, far exceeding anything that might have been recovered by the sale of the artifacts on the antiquities market. For this reason, such a course of action will never be followed by commercial treasure hunters.

The people of Texas and the other parts of the United States have benefited greatly from the excavation of the *San Esteban*. This profit, however, has been in the actual enrichment of our lives rather than in our purses. It will continued to be reaped by children, by our children and by our childrens' children.

There are some further comments that I would like to make. I have heard frequently that treasure hunters represent private enterprise. I'd like to point out that we also represent private enter-

prise because, for example, the study that enabled us to find the *San Esteban* was totally financed by private funds, contributions and gifts from the private investors. There is a difference between investors in the scientific archeology and the investors in the treasure hunters' corporations. The investors in a private treasure hunting company want to make a profit on some of the artifacts. These artifacts then disappear from the public view.

Now, in the case of our investors, they get a tax benefit, the same sort of tax benefit, because they make a contribution to a private foundation. But they also do not expect a single thing in return for their contributions and investment in our society.

I might also point out that Dr. George Bass' excavations which are done through Texas A&M University, are totally financed by private enterprise. The claim that treasure hunters do scientific work, and I will not say that all of them do not, because I do not know, but the only problem is that, insofar as the archeological community can determine on the basis of scientific results that can be shown and evaluated by the community and conveyed to the public, that they have not done so as yet.

I think that I would like to close in this regard by thanking you for this opportunity to express our support for these efforts to protect our historic heritage. Let us finally remove our historic shipwrecks from their long legacy of greed.

Thank you, sir.

Senator WALLOP. Thank you, Dr. Wendorf.

You said that your associate does this for wealth and knowledge, but are those necessarily exclusive? Does it necessarily follow that if one does it for wealth that there can be no knowledge gained?

Dr. WENDORF. No, sir, it does not, obviously.

Mr. Chairman, there is going to be a problem here in working out some sort of a compromise. I do recognize that there needs to be some role for each.

There is fundamentally one point at this time that I would like to make. I really think that the States ought to manage the properties on their lands. That is the fundamental issue.

I think also that there needs to be recognized that people are in it for profit and business. Unless there is some sort of interaction here with the State or the Federal Government, they are not likely to be interested in salvaging something which does not have large amounts of wealth or that doesn't have something that will be an important contribution to the antiquities market. There needs to be a way in which those remains do not disappear into the hands of investors or disappear from the public. I believe that, for most of these things, that there is a public interest in them.

There is a further point. I think that we have not done as we ought to do about involving the amateurs of underwater archeology or the scuba divers. I think that this is something that needs to be addressed in some way, perhaps, in this bill. It certainly does need to be addressed by our community.

In the case of many States, they probably will want to work with some organizations to develop or to find and locate, perhaps not excavate, and I don't know whether that is feasible or not, but it is to certainly find and locate the historic shipwrecks which is a difficult problem.

Senator WALLOP. One of the things that worries me is that, on both sides, this will end up leaving the public as the principal loser. Texas is fortunate to have more wealth than other States, private and public. Not all of us are so situated.

Dr. WENDORF. Mr. Chairman, most of our money doesn't come from Texas residents for this underwater archeology.

Senator WALLOP. I understand that.

Dr. WENDORF. Yes.

Senator WALLOP. Clearly, there is a large public interest.

Dr. WENDORF. Yes.

Senator WALLOP. This was as stated earlier, for instance here, in the raising of the *Mary Rose*.

Dr. WENDORF. Yes, sir.

Senator WALLOP. But if you get it so that only the scientists can pass judgment, then there is going to be a lot of judgment not made because there are not that many scientists. If you get only treasure hunters for wealth that can do this, there is going to be the other kind of circumstance that you described.

What I have been casting for here is some way to make those circles connect to the benefit of the public, really, which is what we want. There is no purpose in us passing legislation unless there is a public benefit.

Dr. WENDORF. That's right. Senator, there are two areas here, and I have given this a lot of thought, and there are two areas where I think that something might be addressed.

Senator WALLOP. Go ahead.

Dr. WENDORF. One is an example of the case of Australia, which has a finder's fee. It is not an exorbitant fee. It is a finder's fee for those individuals that locate and report the discovery of historic shipwrecks. I do not know if that is feasible, but something along that line might also be possible.

There is also a question in my mind of what do we do if we have 10,000 gold bars or 10,000 coins or 10,000 bottles, 10,000 rifles, then what do we do about this problem? We haven't had that problem in Texas yet. I do not know how we will try to resolve it. Clearly, there needs to be some way in which this can be accommodated. The public is not interested in maintaining and storing and keeping 10,000 rifles.

Senator WALLOP. Where they only see one that is on display.

Dr. WENDORF. If you have representative samples of these things, how many more do you really need? I don't know. This concerns me.

Senator WALLOP. Yes, that also concerns me. I am frightened that if we get into this thing so rigidly that you will have undisclosed vandalism because it is going to be expensive to do that.

Dr. WENDORF. I don't think that the average scuba diver or the individual that would go down and find the keel, like you did, that this really represents our problem.

Senator WALLOP. No; I am aware of that. I am not talking about that. The fact of it is that if you're anxious to avoid haste or this sort of immediate exploitation, which has the risk of taking place without discovery, then you are going to have to do something to make it worthwhile and that this is done in an orderly and scientific way. One way to be sure that people are going to blow as much

of a hole as they can and take as much as they can in a day or so and get the hell out of there is to make it so rigid that—well, that is a temptation. If there is a way of accommodating both of the interests there, you might get an orderly situation or a development of a site in perhaps Texas or Florida or some other area where the archeologists work with them along with the process and do it in a way that has a mutual benefit. It seems to me that the public is going to end up as a bigger winner if we do achieve that than if we get some kind of thing that leads to the temptation to exploit continuously as much as you can and then get the hell out before you're caught. There are a number of other things that I wouldn't be aware of, but I am certain that the world is full of people that are knowledgeable and ingenious enough to skirt most of the things we can devise. Perhaps we could bring those circles together.

Dr. WENDORF. Clearly, Mr. Chairman, we have to do something.

Senator WALLOP. Yes.

Dr. WENDORF. I can only respond the best I can.

Senator WALLOP. Are you aware of the State of Florida's agreement with Mr. Fisher?

Dr. WENDORF. Yes, sir, but I might also indicate that my testimony is endorsed by the attorney general in Florida.

Senator WALLOP. Well, that doesn't necessarily——

Dr. WENDORF. Excuse me. I am saying that they are not totally—well, I would suspect and I am not speaking with any knowledge on this issue, that they perhaps thought that they were making the best deal that they could in considering the opinion of the salvage provisions of the maritime law. They were trying to get something.

Senator WALLOP. Thank you.

Dr. WENDORF. Yes, sir.

Senator WALLOP. Senator Hecht.

Senator HECHT. Dr. Wendorf.

Dr. WENDORF. Yes, sir.

Senator HECHT. Would you respond to Mr. Fisher's statement that this wreck off Texas where the State troopers went there and half the gold disappeared on the way back to Texas?

Dr. WENDORF. Let me respond in this particular way, Senator.

Senator HECHT. Yes.

Dr. WENDORF. There were State police who went up. An officer from the attorney general's office went up. An officer from the land commissioner's office went up. The State archeologist went up in a State airplane. When they got there they took an inventory of what was there. They came down with this collection. They reinventoried it when it came.

I will not deny that some of the materials perhaps had disappeared, but it disappeared before it came into the custody of the State of Texas. I don't know specifically. There is, you see, when the treasure hunters did their findings on the ship, they brought the material up on the boat. They took hammers and broke the crust off and cast the crust back into the water. We went to the trouble to recover all of the crust to see if we could determine and detect how much material didn't get back to the State of Texas. There is some question in our minds, and I do not know exactly

how much, and I am not prepared here to offer specific items, but there are some things that we can't seem to account for.

Now, the loss occurred between the time that it was taken out of the ocean and the time that the State of Texas picked this up in Indiana.

Senator HECHT. I was under the impression that the loss occurred when the State troopers went, that it was inventoried when they picked it up, and when they got back to Texas——

Dr. WENDORF. It is still there. Everything on that inventory is still there.

Senator HECHT. Mr. Fisher stated that it wasn't, Dr. Wendorf.

Dr. WENDORF. I am sorry, sir. I would be glad to put my testimony against his. Let us find out.

Senator HECHT. Thank you.

Dr. WENDORF. Yes, sir.

Senator HECHT. Thank you, Mr. Chairman.

Senator WALLOP. Dr. Frison.

Dr. FRISON. Yes, Mr. Chairman.

Senator WALLOP. From the standpoint of the Society for American Archeology, should age be the only criteria for identifying an historic shipwreck?

Dr. FRISON. I would defer anything on underwater archeology to the underwater archeologists. It is certainly not so in terms of plains prehistory with which I am very familiar.

Now, there are many recent things that we know about, that is, that we know less about, than probably we do of some things in older periods.

Senator WALLOP. Dr. Wendorf, go ahead.

Dr. WENDORF. Yes, sir. I support the proposal by the administration that it be turned to a particular year, whatever the year. This is on the grounds that I would like to avoid needless delays while the Department of the Interior draws up guidelines and regulations and while the process of identifying the ship and determining its eligibility, that this can be a needlessly long and cumbersome process.

I think, however, that either system would work. That is, the one that you have in S. 1504 would be perfectly satisfactory to me. Under emergencies the designation process, the determination can be speedy and effective. I have no problems with either way it goes. If it is 100 years instead of whatever, I have no problems. In the wisdom of your committee, you can choose the best way.

There are some disadvantages to both sides.

Senator WALLOP. Let me ask you another question. The salvors argue that the admiralty law is the best system for protecting historic shipwrecks. They assert that without some level, that is, without some level of free enterprise, that some of these wrecks may never be found. When they are found, the admiralty courts will require the salvors to protect the important archeological information. Would you comment on that?

Dr. WENDORF. It gets to a definition of protection. My view, as to the Texas instance, and what has happened in numerous cases in Florida, is that they are not protecting the historic resources no matter what the court says. They do not have the staff. The court does not have the staff, the background or facilities or experience

to determine what is proper protection and preservation for those. They are clearly operating in an area in which they do not have the background or experience. This is really the problem which admiralty courts have created. If the historic resources were adequately taken care of, we wouldn't be here today, Mr. Chairman. Clearly, the only reason that the treasure hunters want the admiralty law to remain in effect is because they have been given a free hand. They do whatever they want to. So, that is the real problem here. It is not that they don't think, in their best view, that they are doing an adequate job. I hold that they are not doing an adequate job. So does most of the rest of our community.

Senator WALLOP. Is that universal?

Dr. WENDORF. There may be some archeologists that are employed by treasure salvors. There have been one or two under their employment who would hold that they are doing an adequate job.

Senator WALLOP. I have a little bit of trouble in saying that the courts are not capable of doing it. It seems to me, in some instances, at least it would be in the interest of the State and the Government to make the case, that is, if the requirement is there, to protect the archeological interests. That is, if the State or the Government feels this is not being protected. Then, isn't it, under the law——

Dr. WENDORF. Excuse me.

Senator WALLOP. Yes.

Dr. WENDORF. Suppose that we have a treasure salvor that is operating with an agreement with the State, let us now say.

Senator WALLOP. Yes.

Dr. WENDORF. And under this agreement there is an archeologist employed by the State who is on board ship, and there are 10 or 15 of the employees of the treasure salvor who are down operating beneath the ship, then there is no way in which that operation can be properly supervised by the single employee on board the ship. You can't keep track of the inventory that is coming up, much less keep track of how the material is located and maintain the proper record.

Senator WALLOP. How would they do this if the State was doing it?

Dr. WENDORF. Well, if it is done properly, the man that is running it has complete control of everything on board, Mr. Chairman. This does not happen with the salvors.

Senator WALLOP. Wouldn't that be an area where you could have the circles get together?

Dr. WENDORF. That might be a possibility. We had some thoughts that we might try that in Texas. Our legislature, in its wisdom, took those thoughts away from us in the last session. They denied us this action to do these kinds of things.

Senator WALLOP. It is difficult to ask questions in areas where you don't possess any expertise. It would seem to me that those circles might join somewhere.

Dr. WENDORF. We have been battling in Texas in the courts with the group from Indiana. The Federal judge specifically declined the salvors being responsible for the archeological standards. They said that was not their concern. We have a real issue there.

Senator WALLOP. How do the laws work on them, George, for the same kind of concept?

Dr. FRISON. If you're referring to the land, I think that we have adequate laws. I don't think, well, Federal laws, at least. Many of the States don't. I don't think that the laws are well enough enforced as yet, but we are still losing a lot of valuable data. I think that the laws are adequate if we can properly enforce them.

Dr. WENDORF. Yes.

Senator WALLOP. Thank you very much for your testimony this morning, gentlemen.

Dr. FRISON. Yes, sir.

Dr. WENDORF. Thank you.

Senator WALLOP. We appreciate it.

Next is a panel consisting of Mr. R. Duncan Mathewson III, chairman, Atlantic Alliance for Maritime Heritage Conservation, Summerland Key, Fla., and John Fine, CMAS delegate. Underwater Society of America, representing World Underwater Federation in Paris, and from Scarsdale, N.Y.

You may proceed, Mr. Mathewson.

STATEMENT OF R. DUNCAN MATHEWSON III, CHAIRMAN, ATLANTIC ALLIANCE FOR MARITIME HERITAGE CONSERVATION

Mr. MATHEWSON. Mr. Chairman, I'd like to read a short version of my written testimony. Then very quickly I will get into one of the issues and problems at hand.

We are touching on a lot of very important problems and I think that we ought to talk a little bit about them.

First, I will read my short statement. I am speaking today as the chairman of the Atlantic Alliance for Maritime Heritage Conservation. This is a nonprofit diver organization representing a coalition of marine archeologists, maritime historians, shipwreck salvors, and sport divers throughout the country.

For the past decade I have been conducting intensive archeological research on shipwrecks off the American coast. Most of the work has been done in close cooperation with Mel Fisher, Treasure Salvors, and other commercial salvage companies.

I have worked closely with both the sport divers and shipwreck salvors. During this time I have always been a strong advocate of State and Federal legislation which would help to preserve historic shipwrecks.

As a strict historic preservationist, I have also continually sought ways in which this could be worked out while not antagonizing the very people, the marine archeologists, that is, that they need, to help to protect these priceless capsules.

Any Federal legislation such as S. 1504, which lays the foundation for unfairly restricting the public from diving on shipwrecks will produce the exact opposite from what all the historic preservationists want.

Sound shipwreck legislation must take into consideration the very positive role that private enterprise can play in helping to document the archeology of historic wreck sites, Mr. Chairman.

After many years of unproductive litigation, a cooperative agreement has been signed in Florida between Mel Fisher, president,

Treasure Salvors, Inc., and Mr. George Firestone, secretary of state, regarding the recovery of archeological data on sites under Federal admiralty law. This agreement says, it states, Mr. Chairman, that Fisher's salvage companies in the State will act with "mutual cooperation and good will" to maintain the archeological integrity of all shipwreck sites.

Now, all salvage work is now being conducted within the guidelines set out by a five-member committee comprising two representatives of the salvage company, two representatives of the State; also a fifth member chosen jointly by them.

Work in Florida has already proven that such a program, a cooperative program, can be made to work to the mutual benefit of all parties concerned.

I should like to read an extract from a recent court decision that came just last year, the *Cobb Coin* decision. It is the maritime law, and this is from Judge King's decision. It is the maritime law of salvage which protects the important cultural resources represented by historic shipwrecks. The judge held that this court holds that in order to stake a claim for a vessel of historical and archeological significance, it is an essential element that the salvor's document——

Senator WALLOP. Please move closer to the microphone, Mr. Mathewson.

Mr. MATHEWSON. This court holds that by meeting the threshold requirements, the salvor enhances the value of the discovery in such a way as will be recognized by the court in the determination of the salvage award.

The Federal admiralty courts are now insuring that the public interest is being protected, entitling Federal or State representatives to intervene in each salvage award so that a representative cross section of artifacts that are recovered from the wreck sites can be donated by the private salvor or awarded by the Federal or district court.

In the, that is, in this way, the maritime law of salvage insures that the people's cultural heritage will be preserved in public museums inasmuch as the State has been guaranteed to receive a cross section.

Under the law of salvage, as it stands today, and as presently being carried out in Florida, historic shipwrecks which lie beneath the territorial waters of the United States are protected in such a way that there is both an incentive to discover them and to undertake the risks and dangers inherent with the requirement that, if salvaged, that the operation be carried out in such a manner that the archeological cultural items of significance will be protected.

You can see that we do have a working system. It is working now. We have a good cooperative agreement that the Florida Department of State fully supports. We maintain that, since this system is already in motion, that it is working, as we do have the element of private enterprise involved with risk capital, but, at the same time, there are regulations coming from Florida, together with academic input. We have the University of Florida museum now, Mr. Chairman, that is actively involved in the operation. We have private enterprise providing the capital. We have government regulation coming from Tallahassee in terms of resource manage-

ment procedures and policies. We have the academic community involved as well.

This can be extended to other States, a model that can be extended to other States.

I would like right now to talk a little bit about the rape and pillage. We seem to be hearing an awful lot about rape and pillage. I think that it is important to really clarify the record.

Let me first state that in the last 10 years it is a little bit like Daniel in the lion's den. It is being an academic trained as anthropologist and as an archeologist being involved with trying to make a commercial salvage operation become more sensitive to the archeological and historical significance of the sites that they are salvaging. To this end, I worked with Mel Fisher and his treasure divers for a long period of time to develop what I call a participation model. This is by working with the treasure divers in the sense of their helping me to collect the historical data. We would then publish this and determine then the significance of that site. Then we can use this to better preserve other shipwrecks.

In my period of time working with Mel and his treasure divers, we published enormous lists of conference papers, books and a master's thesis. It is part of the record. I am willing to provide you all with a biography, with a list of this to give you an idea of not only what we published, but what we have developed as exhibits. It is what we have done to promote awareness.

To a great extent, the reason why we are all here this morning is really because we have done a lot of work in Key West, both in the legal area as well as in the archeological area. The American public has become more and more aware of shipwrecks. Hence, we have got to develop a more cooperative approach.

One of the things that I would also like to draw your attention to is my master's thesis done at Florida University many years ago. The important thing about this thesis is that it outlines my approach to working with commercial salvors. It outlines both the strengths and weaknesses. It points out where the model works and where it falls down. There is a certain stage where the interests between, the interest that is overlapping between what the archeologist wants to do and what the commercial salvor wants to do, and this overlaps significantly. This tries to define shipwreck. It tries to work out the very important elements concerning the scatter pattern. Shipwrecks can be scattered over many miles. It is important not only to the archeologist, but it is also important to the shipwreck salvor to determine the size, shape, and configuration of that scatter pattern. So, there is a considerable amount of overlap of interest in the early phases of the shipwreck salvage work. This thesis goes into that in some detail.

The point I am trying to make is that I think most historic preservationists who are very eager to get something on the books are pushing the point to such an extent that it has become a little bit ludicrous when they talk about rape and pillage. There is constant talk about rape and pillage. off Louisiana. There is the case where shipwreck salvors came in and looted a ship. Here I have a report of that work which was carried out in close cooperation with the State officials and private enterprise and people who actually found a wreck. In the introduction of one it acknowledges this close

cooperation. Here, again, we have concrete proof that, instead of rape and pillage, we are getting some very fine research out of a cooperation operation.

Sometimes *Greece* is brought up at times as a case for rape and pillage or off the coast of North Carolina. The work there initiated in the shipwreck program. This work was carried out by U.S. Navy divers under such supervision. As a result, we have a very fine publication which was written by a conservative who helped to develop the North Carolina program as a result of this work. These are just some of the examples of how some of the academics are more interested in getting something on the books in terms of historic conservation.

We are looking at what is happening on the seabed. Shipwreck archeology looks a lot different on the seabed than it does from behind a desk. What I have always tried to do is to find ways in which we could marry the private enterprise ability to raise money, to develop expertise, to search, to locate, and to salvage shipwrecks with the understanding that we have got to do it in such a way to preserve the archeological integrity of the wreck.

Another thing that I would like to just briefly mention is the shipwreck definition. We heard a lot today about what is a shipwreck and what is not a shipwreck. I would very briefly like to point out certain things that I mentioned in my book, which will be out in about 8 months. It is being written for sport divers, introducing them to the whole concept of shipwreck archeology.

In one section of the book I do go into this to define what the differences are between historic shipwreck and a modern shipwreck.

There are three ways of doing this. You can use an arbitrary cutoff point, a date. You can say that any sites after 1850 or after 1900 are modern or you can say or use a time period of 50 or 100 years. Both have been suggested. Some States have even suggested 10 years. This is to distinguish the modern shipwreck from the historic shipwreck.

The third way, and this is the most difficult way, is to determine the significance in terms of the research potential and physical integrity. If we can do that on each site, then we would be able to nominate it to the National Register as has been suggested. The problem with that is that it takes enormous time. We are talking about well over 100,000 historic shipwrecks, including the Great Lakes, the west coast, and the inland waterway system. We are talking about an enormous quantity of shipwrecks. We have got to determine whether or not we are going to use the arbitrary cutoff, a certain time period, or whether we are going to survey and assess. If we are going to survey and assess, we have got to involve the sport divers. There are well over a million active sport divers right now in this country. They are in California, Michigan, Florida, the Carolinas, the Mid-Atlantic States, New Jersey, Massachusetts. And these are mostly, well, active. There is a lot of active diving going on in those areas. We have got to mobilize these sport divers to help the archeologists to survey and assess. If we can do that, then we can pick out the more sensitive ones and we can restrict diving on those sites. This will allow the majority of the more recent shipwrecks to be dived on by the diving public. There are

many cutoff dates that you can suggest in this regard. I, for one, think that, on historical terms, that 1900 is a very convenient cutoff date. I suggest that in my book. I document why I think that 1900 is a good time. There are arguments for and against that, but if you use that, you must understand that there could be, and there are sensitive historical sites after 1900. We should make some allocation so that special sites dated after 1900 should be allocated in a special situation and we could preserve those sites as well.

There are a number of other things that I might want to say. I think that I will just close by stating that most of the rape and pillage that you hear about is going on in the States that have not developed good State programs. Most, if not all, alleged looting is, that is going on in Texas and Florida and other States that have salvage laws, which is in spite of State laws and procedures. Looting has not happened where the wrecks have been under the supervision of the Federal admiralty system. This is simply because the courts do not allow salvors under the system to work on sites without maintaining the integrity of those wrecks. If Texas has a problem supervising the salvage operations, it doesn't make much sense to give them the exclusive right to supervise these sites. If things are not working out in the States, I think this means that we have got to have some uniform law or uniform approach. I maintain that we do have that system now working in Florida. I have given you copies of the agreement worked out between the Florida Department of State and the Treasure Salvors, Inc. I have given you copies of the guidelines, the archeological guidelines, that will give you an idea of how this program is being conducted. I have given you one or two other inclusions in my written testimony. Thank you.

[The prepared statement of Mr. Mathewson follows:]

THE ATLANTIC ALLIANCE FOR MARITIME HERITAGE CONSERVATION
Post Office Box 27272
Central Station
Washington, D.C. 20005

SENATE COMMITTEE TESTIMONY

ON S-1504

PRESENTED BY

R. DUNCAN MATHEWSON III

CHAIRMAN,

ATLANTIC ALLIANCE FOR

MARITIME HERITAGE CONSERVATION

OCTOBER 21, 1983

TO: Committee on Energy and Natural Resources
Room 366, Dirkson Senate Office Building
United States Senate

FROM: R. Duncan Mathewson III
Marine Archaeologist
Chairman, Atlantic Alliance for Maritime Heritage Conservation
Rt. 4, Box 904
Summerland Key, Florida 33042

RE: Congressional Hearing on S-1504

Dear Mr. Chairman and Committee Members:

Thank you for providing me with the opportunity to appear at this hearing on shipwreck legislation. I am speaking today as Chairman of the Atlantic Alliance for Maritime Heritage Conservation. This is a non-profit dive organization representing a coalition of marine archaeologists, maritime historians, shipwreck salvors and sport divers throughout the country.

For the past decade I have been conducting intensive archaeological research on shipwrecks off the American coast. Much of this work has been done in close collaboration with Treasure Salvors, Inc., and other commercial salvage companies.

S-1504 represents a giant step backwards in the present-day trend of volunteerism strongly advocated by President Reagan. The general trend for increased local public participation in the historic preservation movement on land sites is producing significant results. If this Bill is passed, individual states may be able to severely limit public access to most of the shipwrecks all along the coast. This will alienate forever the sport diving community and the many shipwreck salvors who are willing and able to assist marine archaeologists to survey and assess shipwrecks off our shores.

Throughout my many years of shipwreck research, I have worked closely with both sport divers and shipwreck salvors. During this time I have always been a strong advocate for state and federal legislation which would help to preserve historic shipwrecks. As a strict historic preservationist, I have continually sought ways in which this could be done while not antagonizing the very people marine archaeologists need most to help preserve and protect these priceless time-capsules.

Any federal legislation, such as S-1504, which lays the foundation for unfairly restricting the public from diving on shipwrecks will produce the exact opposite from what all historic preservationists want.

Sound shipwreck legislation must take into consideration the very positive role private enterprise can play in helping to document the archaeology of historic wreck sites.

After many years of unproductive litigation, a cooperative agreement has been signed in Florida between Mel Fisher, the president of Treasure Salvors, Inc., and George Firestone, the Secretary of State, regarding the recovery of archaeological data on sites arrested under Federal Admiralty Law. This agreement states that Fisher's salvage companies and the State will act with "mutual cooperation and good will" to maintain the archaeological integrity of all shipwreck sites. All salvage work is now being conducted within guidelines set out by a five-member committee, comprising two representatives of the salvage company, R. Duncan Mathewson and Dr. Eugene Lyon; two representatives of the State, James J. Miller and Louis Tesar; and a fifth member chosen by them, Dr. Kathleen A. Deagan of the Florida State Museum. Work in Florida has already proven that such a cooperative program can indeed be made to work to the mutual benefit of all parties concerned.

This new development in Florida seriously questions whether new federal legislation is needed at all. If good shipwreck archaeology is already being done with State cooperation under Federal Admiralty jurisdiction in Florida, why can't this be done in other coastal states as well? What do the individual states think they are going to gain by the passing of this Bill? Why do most state and federal archaeologists think that it is impossible to maintain the archaeological integrity of historic wreck sites under the federal court system when it is already being done in Florida? These are only a few of the questions which must be answered before any new shipwreck legislation is passed.

The real issues of this bill go well beyond the concerns of the archaeologist in his battle to protect shipwrecks. They go to the very heart of democracy and the type of personal freedom that all Americans cherish. The shipwreck controversy concerning preservation versus utilization is something that will never be settled solely by legislative statutes. The answer to this problem will only come when government archaeologists and resource managers seek input from the waterfront community instead of ignoring them. Until sport divers and salvors are invited to actively participate in the entire legislative process, sound shipwreck legislation in this country will be nothing more than a dream.

The Atlantic Alliance for Maritime Heritage Conservation believes that this proposed federal legislation would severely restrict recreational sport diving and underwater archaeological research while inhibiting public participation initiatives within the waters of the United States. The organization also believes that the fields of maritime history and shipwreck archaeology are best benefited when all endeavors promoting their advancement are encouraged and unencumbered by burdensome and unnecessary laws, rules and regulations. The membership also supports the belief that the recent conduct of shipwreck excavation and archaeological recovery under the jurisdiction of Federal Courts and Laws of Admiralty has been of benefit to the fields of shipwreck archaeology, maritime

history and historic preservation. It is further believed that the state bureaucratic control of shipwreck archaeology programs has often proven to be unfairly administered and contrary to the public interest.

R. Duncan Mathewson III

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FLORIDA DEPARTMENT OF STATE
George Firestone
Secretary of State

DIVISION OF ARCHIVES,
HISTORY AND RECORDS MANAGEMENT
The Capitol, Tallahassee, Florida 32301
(904) 488-1480

August 22, 1983

Mr. George R. Fischer
Research Archaeologist
National Park Service
Southeast Archaeological Center
P.O. Box 2416
Tallahassee, FL 32316

Dear George,

Please find enclosed the news item we discussed for publication in the upcoming issue of Society for Historical Archaeology Newsletter. If there are any questions or if you think any revisions are necessary please call me at 487-2333.

Thank you for your help.

Sincerely,

James J. Miller, Chief
Bureau of Archaeological Research

JJM:mr

Enclosure

cc: Kathleen Deagan
Eugene Lyon
R. Duncan Mathewson, III
Louis Tesar

After more than three years of litigation and negotiation a cooperative agreement has been reached between the State of Florida and Cobb Coin, Inc., and Treasure Salvors, Inc., (both termed Cobb Coin) regarding archaeological data recovery on areas formerly under admiralty arrest. The agreement, and an accompanying memorandum of understanding, apply only to submerged shipwreck sites on State owned sovereignty land within seven arrest areas covered in the original admiralty suit and subsequent specific contracts. In this instance, where federal admiralty law has been judged to have precedence over State historic preservation law, the parties to the agreement have sought a practical solution to the management of submerged historic resources which are subject to commercial salvage in these contested areas. On other sovereignty lands which have not been placed under admiralty arrest, Chapter 267, Florida Statutes continues to apply and be enforced.

In general, the agreement states that Cobb Coin and the State will act with "mutual cooperation and goodwill" in carrying out their respective responsibilities, to be overseen by a committee of five members. The committee comprises two representatives of Cobb Coin, R. Duncan Mathewson, III and Dr. Eugene Lyon, two representatives of the State, James J. Miller and Louis Tesar, and a fifth member chosen by them, Dr. Kathleen A. Deagan of the Florida State Museum. It is charged with developing written guidelines for the following activities on sites covered in the agreement: development, maintenance, review, and release to the public of archaeological provenience data collected by Cobb Coin; State participation in Cobb Coin exploration and salvage activities, including placement of State personnel on salvage vessels; State review of and access to salvaged artifacts; mutual exchange of information concerning artifact handling; and mutually agreeable exchange of articles. To date the committee has met twice and has prepared a draft of interim archaeological guidelines for salvage carried out within the contract areas specified in the

agreement during the summer 1983 season now underway. It is intended that the guidelines be made final after experience has been gained from the current year's work.

The archaeological guidelines are seen as the means to effective management of shipwreck resources which must occur within the context of practical and political reality often at odds with the ultimate desires of the professional archaeological community. Past experience in the State of Florida has shown that adversarial relations between the State and salvors are not productive of maximum archaeological data recovery and resource management, which goals remain the primary objectives of State participation in any salvage program. The new cooperative arrangement incorporates the participation model developed by Mathewson on the Atocha and Margarita sites over the past decade. It has involved, in addition to the interim archaeological guidelines, a workshop for salvors to teach standardized position finding, mapping, artifact protection, and data recovery techniques, mutually beneficial exchange of information concerning artifact conservation, and donation to the State of recovered material not represented in its inventory.

It is the intention of the State and the salvors that the present agreement and the resulting guidelines work toward placing future archaeological data recovery in a professional and academic context. Public and professional presentation, publication, review and discussion of research results are essential to any objective resolution of archaeological and scientific questions to which such data might be applied. To this end, the guidelines stress the participation of people from relevant university and museum programs who are directed by qualified professionals in thesis or equivalent level research projects concerning shipwreck sites. Two preliminary reports on this year's work will be prepared by Cobb Coin with the assistance of the State.

Events of the next several years will test whether or not archaeological data collected in conjunction with salvage activities can meet the needs of the

professional archaeological and historical communities. At the very least, claims for archaeological relevance may be tested; however, it is the hope of the State, the salvors, and the committee that the results of their combined efforts, and those of the academic community will provide a model for responsible archaeological data recovery programs in coastal waters where jurisdictional disputes have proven counterproductive.

Questions and comments may be addressed to the committee members directly or can be forwarded through James J. Miller, Chief, Bureau of Archaeological Research, Florida Division of Archives, History and Records Management, The Capitol, Tallahassee, FL 32301.

MEMORANDUM OF UNDERSTANDING

BETWEEN: GEORGE FIRESTONE and MELVIN A. FISHER

SUBJECT: SETTLEMENT AGREEMENT AND SALVAGE CONTRACT DATED JUNE 3, 1983

DATE: JUNE 3, 1983

1. It is the understanding of the parties that all artifacts salvaged, under the agreement and contract referenced above, will remain in the possession of COBB and that COBB will be solely responsible for the stabilization and maintenance, storage, and security of all artifacts and the costs incurred therein until a distribution occurs. COBB shall secure and maintain appropriate loss protection insurance and provide a copy of the policy to the Department annually upon renewal. The Department of State, having an interest in the methods and procedures employed, will provide technical assistance and oversight and does not waive its right to intervene if it feels that appropriate procedures are not employed to protect the artifacts prior to distribution.

2. It is the understanding of parties that a physical distribution of salvaged materials will occur on or before January 30, of each year. It is further the understanding of the parties that a determination of the artifacts to be donated to DOS, will be available to DOS in written form at least 30 days prior to distribution and that if DOS desires to make any further claim for artifacts on behalf of the citizens of the State of Florida, that it do so within 15 days of receipt of the written notification, or relinquish further claim. It is further the intent of the parties that DOS and COBB avoid controversies through the utilization of the Committee to assist in identification of artifacts to be donated to DOS, and that all five members of the Committee participate in the development of the donation list and have access to all salvaged articles.

3. It is the understanding of the parties that a cross sectional representation of salvaged artifacts will include approximately 1/5 of the articles salvaged and that COBB may donate up to an additional 1/5 of the articles salvaged depending on the nature of the articles and their unique value to the citizens of the State of Florida in their history and heritage.

4. It is further the understanding of the parties that agreements and contracts are only as good as the individuals that are governed by them. It is the intent of the parties of the aforementioned agreement and contract that there be mutual cooperation and goodwill. The air of assistance, cooperation, compromise and trust is embodied in both the agreement and the contract and will be continued throughout the life of both documents by both parties and their staffs.

Melvin A. Fisher (per)
MELVIN A. FISHER

GEORGE FIRESTONE

AGREEMENT

THIS AGREEMENT made this 3rd day of June 1983, between the STATE OF FLORIDA, DEPARTMENT OF STATE, hereinafter referred to as "DOS" and TREASURE SALVORS, INC., a Florida corporation and COBB COIN COMPANY, INC., a Florida corporation both of which are hereinafter called, "COBB".

This agreement relates to salvage conducted on or under the navigable waters of the United States within the territorial limits of the State of Florida. The consideration between the parties is the forbearance of further litigation and appellate rights by DOS and COBB and a waiving by COBB of the collection of attorney's fees, costs and interest which has previously been adjudicated by the District Court in Cobb Coin v. The Unidentified, Wrecked and Abandoned Sailing Vessel, Case No. 79-8266-Civ-JLK (United States District Court, Southern District of Florida). Further, DOS extends to Cobb Coin Company, Inc. the right of first refusal to enter into an annual State Salvage Contract, in consideration for the sum of one dollar ($1.00), on the sites identified in Attachment 1, and to continuously renew such contract at the option of COBB at an annual cost of one dollar ($1.00) as long as COBB continues to diligently work the sites. COBB hereby accepts this offer and the executed contract is set forth in Attachment 2. The parties hereto agree that they are bound herein and acknowledge, each to the other, receipt of adequate consideration to bind their compliance with the terms and conditions contained herein. The parties agree that:

1. All appeals by DOS from the admiralty litigation referenced as the Wrecked and Abandoned Sailing Vessel, Case No. 79-8266-Civ-JLK (United States District Court, Southern District of Florida) shall be immediately dismissed. The August 31, 1982 MEMORANDUM OPINION CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW issued by Judge James Lawrence King in Case No. 79-8266-Civ-JLK shall constitute an agreed judgement of the parties and shall be recognized by the parties as the established and in force salvage law and agreement between DOS and COBB for all salvage operations on the Corrigan's site.

2. COBB hereby relinquishes and waives all rights to collection of the $119,761.57 plus all interest which has been awarded by the Federal District Court in the above referenced litigation.

3. COBB agrees that it will make no claim to any object presently in the possession of the State of Florida from past salvage activities conducted on or under navigable waters of the United States within the territorial limits of the State of Florida. The DOS agrees to make no claim to any object in the possession of COBB, past, present or future from the Corrigan's site except in a manner provided by this agreement.

4. DOS and COBB will cooperate to avoid controversies concerning data collection, and data and artifacts to be conveyed to DOS by appointing a committee composed of two representatives of DOS and two representatives of COBB and one representative appointed by those four representatives. If the four representatives fail to agree to the appointment of a mutually acceptable fifth representative within 60 days of the appointment of the initial four representatives, then the fifth appointment shall be made by the Court. The committee, in addition to dealing with normal issues of interest, shall within three months of its appointment of the fifth representative:

a. Develop written guidelines for the development, maintenance, review by DOS, and release to the public record of the archaeological provenance data gained from salvage and exploration activities conducted by COBB within the territorial limits of the State of Florida. Such standards to be submitted to the Court.

b. Develop written guidelines which allow for DOS participation in COBB's salvage operation including but not limited to the placement of a DOS representative on a salvage vessel, upon request of the State, so long as such participation does not interfere or restrict COBB's salvage operation and is at the sole expense of the State.

c. Develop written guidelines for DOS to review and have access to salvaged objects on a regular and ongoing basis for the purpose of identifying and asserting an interest, on behalf of the citizenry of the State of Florida, in artifacts recovered which are not represented in its present inventory and which it feels are essential to the preservation of the people's heritage. Such guidelines to be presented to the Court.

d. Develop written guidelines for a mutual exchange of information concerning analysis of artifacts, restoration and/or stabilization of artifacts, and display, interpretation, and authentication of artifacts.

e. Develop written guidelines for a mutually agreeable exchange of articles in the possession of COBB which the State may want, for articles in the possession of the DOS determined to be repetitive or of no significant archaeological value to the State, which COBB may want.

f. All written standards and guidelines or any other matters agreed upon by the committee shall only apply to the Corrigan's salvage site. If DOS and COBB in the future enter into any contracts to salvage a particular

site such standards, guidelines or agreements may, at the option of the parties, be accepted as the standards that guide those issues during the working of the future contracted salvage site. The parties may, however, agree to new and different standards, guidelines or agreements in the future contracts and are not bound in the future contracts by the standards, guidelines or agreements of this committee or the Court or the judgement of the Court unless both parties agree to be so bound.

5. In the interest of the people of Florida in their heritage and the history of the spanish colonial period, COBB shall cause to be donated to the state a cross-sectional representation of each ancient shipwreck and its contents salvaged.

6. To avoid interference with private or state salvage operations being duly and properly conducted pursuant to the terms of this agreement and the Court's judgment in the above cited litigation or under State law or contract:

a. DOS will not enter into or renew any leases or contracts with regard to any other salvor on the existing Corrigan's site so long as COBB continues to diligently work that salvage site.

b. COBB agrees not to attempt to arrest, under federal maritime law, or work a site which is being diligently worked by DOS contracted salvors, excluding the Cabin Wreck and Douglas Beach sites

c. COBB offers to enter into State Contracts upon the same substantive terms and condition as this Contract and Settlement in reference to the Brass Telescope, Cannon Ball, Douglas Beach, and Cabin wrecks when and if the State resolves its contract questions with other salvors. COBB further offers to enter into State Contracts upon the same substantive terms and conditions as this Contract and Settlement as to other sites that the State chooses to make available.

d. Diligently, with respect to paragraphs 6a and 6b of this agreement means: A fair, proper and reasonable degree of activity upon a site, measured with reference to the particular circumstances surrounding the salving of a submerged shipwreck to include but not be limited to weather, water conditions, time of day, day of week.

7. Nothing in this agreement will limit DOS from conducting future salvage operations with COBB or any other salvor in accordance with the spirit and conditions of this agreement on any or all unidentified salvage sites.

8. In reference to the future salvage of wrecks, the parties recognize that COBB may institute appropriate Federal Maritime proceedings to protect any valid right. Nothing in this agreement will limit DOS or the State from asserting a claim of ownership to the submerged lands within the territorial limits of Florida or asserting ownership of historic artifacts or historic shipwrecks and their contents found on or under its submerged sovereignty lands in future litigation with COBB or any other party in any Court. This includes the right to relitigate any or all of the issues raised in Cobb Coin v. The Unidentified, Wrecked and Abandoned Sailing Vessel, Case No. 79-8266-Civ-JLK (United States District Court, Southern District of Florida).

9. COBB and its officers and agents waive all current and future claims against the State or its officers, agents and employees, separately and jointly, arising out of past actions of the State and/or its officers in relation to Case No. 79-8266-Civ-JLK.

10. DOS likewise waives all current and future claims against Melvin A. Fisher, Treasure Salvors, Inc, Cobb Coin Inc., both Florida Corporations, and their officers, agents and employees acting within the scope of their employment, separately and jointly arising out of past actions in relation to the Case No. 79-8266-Civ-JLK.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in execution of this agreement the day and the year first written above.

MELVIN A. FISHER, PRESIDENT
Treasure Salvors, Inc.
Cobb Coin, Inc.

STATE OF FLORIDA
DEPARTMENT OF STATE

BY: _____
GEORGE FIRESTONE
Secretary of State

Attachment 1
Sites

1. Anchor Wreck*
2. Spring of Whitby
3. Rio Mar Wreck
4. Sandy Point Wreck
5. Unknown

*Excluding any portion of the currently existing boundaries of State Contract S-20 (The Cabin Wreck).

SALVAGE CONTRACT

Between

THE FLORIDA DEPARTMENT OF STATE
Division of Archives, History and Records Management

and

COBB COIN COMPANY, INC
A Florida Corporation

Number S-23

THIS CONTRACT made this 3rd day of June 1983, between the STATE OF FLORIDA, DEPARTMENT OF STATE, Division of Archives, History and Records Management, hereinafter referred to as "DOS" and COBB COIN COMPANY, INC., a Florida Corporation hereinafter referred to as "COBB".

This contract relates to salvage conducted on or under the navigable waters of the United States within the territorial limits of the State of Florida. The DOS hereby grants to COBB an annual contract to conduct salvage on or under the navigable waters of the United States within the territorial limits of the State of Florida, from and upon certain submerged sovereignty lands of and belonging to the State of Florida, pursuant to the authority vested in the Secretary of State and the Department of State and pursuant to and as a part of the Settlement Agreement between the parties, dated June 3, 1983, and in consideration of the sum of one dollar ($1.00), with the right to continuously renew said contract annually for the sum of one dollar ($1.00), at the discretion of COBB, so long as COBB continues to diligently work the salvage sites described in Section II and faithfully performs in accordance with the covenants and conditions provided in Section I of this Contract.

SECTION I

1. DOS and COBB will cooperate to avoid controversies concerning data collection, and data and artifacts to be conveyed to DOS by utilizing the committee composed of two representatives of DOS and two representatives of COBB and one representative appointed by those four representatives, appointed under the Settlement Agreement on the Corrigan's Site dated June 3, 1983, and attached hereto. In addition to dealing with normal issues of interest, the committee will develop and DOS and COBB shall implement and honor:

a. Written guidelines for the development, maintenance, review by DOS, and release to the public record of the archeological provenance data gained from salvage and exploration activities conducted by COBB within the

territorial limits of the State of Florida.

b. Written guidelines which allow for DOS participation in COBB's salvage operation including but not limited to the placement of a DOS representative on a salvage vessel, upon request of the State, so long as such participation does not interfere or restrict COBB's salvage operation and is at the sole expense of the State.

c. Written guidelines for DOS to review and have access to salvaged objects on a regular and ongoing basis for the purpose of identifying and asserting an interest, on behalf of the citizenry of the State of Florida, in artifacts recovered which are not represented in its present inventory and which it feels are essential to the preservation of the people's heritage.

d. Written guidelines for a mutual exchange of information concerning analysis of artifacts, restoration and/or stabilization of artifacts, and display, interpretation, and authentication of artifacts.

e. Written guidelines for a mutually agreeable exchange of articles in the possession of COBB which the State may want, for articles in the possession of the DOS determined to be repetitive or of no significant archaeological value to the State, which COBB may want.

f. Written guidelines for the definition and identification of a cross sectional representation of artifacts and the means by which unique articles of salvage will be identified and allocated or donated to the State

g. All written standards and guidelines or any other matters agreed upon by the committee shall apply to the sites identified in Section II of this Contract.

2. In the interest of the people of Florida in their heritage and the history of the spanish colonial period, COBB shall cause to be donated to the state a cross-sectional representation of each ancient shipwreck and its contents salvaged and unique articles of salvage as identified in paragraph 1(f).

3. Diligently, with respect to this Contract means: A fair, proper and reasonable degree of activity upon a site, measured with reference to the particular circumstances surrounding the salving of a submerged shipwreck to include but not be limited to weather, water conditions, time of day, day of week.

4. COBB and its officers and agents waive all current and

future claims against the State or its officers, agents and employees, separately and jointly, arising out of past actions of the State and/or its officers in relation to the sites listed in Section II.

5. DOS likewise waives all current and future claims against Melvin A. Fisher, Cobb Coin Company Inc., and their officers, agents and employees acting within the scope of their employment, separately and jointly arising out of past actions in relation to the Sites listed in Section II.

6. This contract does not constitute a waiver of any other laws and regulations of the United States and the State of Florida that may be applicable to the salvage operation. DOS agrees to cooperate with COBB in compliance with such provision. COBB at no expense to DOS may initiate such proceedings that it deems appropriate to defend and protect its salvage operation from interference by third parties.

7. COBB agrees to be responsible for, and indemnify and defend the Department from, all claims, demands, liabilities, suits of any nature for personal injury or death of personnel of COBB or other third parties arising out of, because of, or due to any act or occurrence of omission or comission by COBB which may arise from the salvage operation of COBB or its agents under this Contract.

SECTION II

1. Anchor Wreck
   A 3,000 yard radius from a point latitude 27° 48.2' North and longitude 80° 24.7' West including sovereign submerged lands seaward of the coastline below the mean low water line, excluding all land West of the mean low water line and a 2/10' buffer zone South & East of the site plotted on Exhibit A (The Cabin Wreck) and any portion of that site which may intrude upon the coordinates plotted above.

2. Spring of Whitby
   A 3,000 yard radius from a point latitude 27° 46.0' North and longitude 80° 23.83' West including sovereign submerged lands seaward of the coastline below the mean low water line and excluding all land West of the mean low water line.

3. Rio Mar Wreck
   A 3,000 yard radius from a point latitude 27° 38.3' North and longitude 80° 20.9' West including sovereign submerged lands seaward of the coastline below the mean low water line and excluding all land West of the mean low water line.

4. Sandy Point Wreck
   A 3,000 yard radius from a point latitude 27° 35.8' North and longitude 80° 19.65' West including sovereign submerged lands seaward of the coastline below the mean low water line and excluding all land West of the mean low water line.

5. Unknown
   A 3,000 yard radius from a point latitude 27° 19.0' North and longitude 80° 12.3' West including sovereign submerged lands seaward of the coastline below the mean low water line and excluding all land West of the mean low water line.

Subject to any rights of the upland owner adjacent to such submerged lands above the mean high water line.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in execution of this agreement the day and the year first written above.

Melvin A. Fisher (for)
MELVIN A. FISHER, PRESIDENT
Treasure Salvors, Inc.
Cobb Coin, Inc.

Witness

Witness

STATE OF FLORIDA
DEPARTMENT OF STATE

BY: Thomas E Gardner
THOMAS E GARDNER
Assistant Secretary of State

Exhibit A
A Description of the Cabin Wreck

A tract of submerged sovereign land in the Atlantic Ocean adjacent to Indian River County, Florida being more particularly described as follows:

All of that part of Universal Traverse Mercater Grid Block Number 2077-556 lying Easterly of the Mean Low Water Line: and also;

All of Universal Traverse Mercater Grid Block Number 3077-556, less the Northeast one-quarter (1/4) of the said grid block: and also;

The Sourhwest one-quarter (1/4) of the Universal Traverse Mercater Grid Block Number 3078-557: and also;

All of Universal Traverse Mercater Grid Block Number 3079-556 lying Easterly of the Mean Low Water Line: and also;

All of Universal Traverse Mercater Grid Block Number 3078-555 lying Easterly of the Mean Low Water Line: and also;

All of Universal Traverse Mercater Grid Block Number 3079-555 lying Easterly of the Mean Low Water Line: and also;

All of Universal Traverse Mercater Grid Block Number 3079-556, less the Northeast one-quarter (1/4) of the said grid block: and also;

The Southwest one-quarter (1/4) of Universal Traverse Mercater Grid Block Number 3080-556: and also;

The South one-half (1/2) of Universal Traverse Mercater Grid Block 3080-555:

FLORIDA DEPARTMENT OF STATE
George Firestone
Secretary of State
DIVISION OF ARCHIVES,
HISTORY AND RECORDS MANAGEMENT
The Capitol, Tallahassee, Florida 32301
(904) 488-1480

July 7, 1983

Mr. R. Duncan Mathewson, III
Marine Archaeologist
Treasure Salvors, Inc.
Route 4, Box 839A
Summerland Key, Florida 33042

Re: Underwater Archaeological Guidelines

Dear Duncan:

Please find enclosed a draft of the underwater guidelines which the committee has been charged to prepare. These are based on your initial written guidelines of June 1, 1983 as well as our conversations in Key West several weeks ago. Additionally, we have discussed the guidelines with salvage and exploration field agents to ensure that the proposed procedures are practical.

We view these as interim guidelines which we hope will serve during the current dive season until the full committee agrees on a final draft. Please review these and let me have your thoughts at your earliest convenience. If necessary, we can revise once more before the July 28th meeting and workshop.

Randall will probably have talked to you by the time you receive this. He plans to attend the Vero Beach meeting and will have discussed the schedule with you.

Thanks for your continued cooperation.

Sincerely,

James J. Miller
Chief, Bureau of
Archaeological Research

JJM:dmc

Enclosure

33-760 O—84——8

INTERIM ARCHAEOLOGICAL GUIDELINES
FOR
SHIPWRECK SITES OFF THE EAST COAST OF FLORIDA
SALVAGED UNDER CONTRACT TO THE STATE
BY COBB COIN COMPANY, INC., OR
SUBCONTRACTORS OF COBB COIN COMPANY, INC.

The following guidelines have been prepared in accordance with the Settlement Agreement of June 3, 1983 between the Florida Department of State and Treasure Salvors, Inc. and Cobb Coin, Inc. They specify salvage methods and techniques which will guide collection of archaeological information on wreck sites covered in the above agreement. The purpose of these guidelines is to establish minimum recording standards in order that sound archaeological provenience information can be made available to the salvors, the State, and eventually the public. Generally, the guidelines are concerned with recording location of excavation activities; provenience of recovered or recorded artifacts; mapping of wreck sites at broad and detailed scales, as appropriate; artifact tagging, handling, security and conservation; and diver safety.

1. Beach Marker Datums/Position Finding Stations

   No wreck site will be salvaged until beach marker datums or position finder stations have been established and approved by the Division and Cobb. Cobb will establish position finder stations, and the Department

of State, Division of Archives, History and Records Management will assist Cobb and its subcontractors in establishing beach marker datums.

2. Data Records

Each boat must have on board one person certified by the Division as qualified to perform the following tasks.

a. Use a sextant to shoot angles to adjacent pairs of beach markers.

b. Plot the resulting readings on a base map.

c. Understand and use the UTM coordinate system to record and describe location of the salvage boat and bottom features.

d. Understand and use an approved artifact tagging system which will allow identification and provenience of all recovered artifacts to be maintained.

e. Understand and use an approved log book system which will provide an accurate record of boat location, salvage activities, artifacts recovered by tag number and location, and other useful information.

The Division and Cobb will conduct a workshop at the beginning of the salvage season to instruct crew members in these areas and will be further available throughout the season to instruct new recorders and assist in recording. At the conclusion of such instruction, the Division and Cobb will certify recorders who are able to maintain records in accordance with the guidelines.

3. Recording Blower Hole Locations and Contents and Other Large Bottom Features.

Locations of blower holes and other large bottom features will be determined by sextant or electronic position finding equipment. To ensure accuracy of recording blower hole locations sextant angles will be shot twice on the

same hole, preferably by two different crew members from a standard location on each boat as near the blower as practicable while the blower is in operation. Each salvage boat will have and use a sextant with an accuracy of at least one minute of arc; Mark Seven or Davis Master are recommended but any sextant of equal or better quality may be used. Sextant readings and blower hole or feature identification will be recorded on log book forms supplied or approved by the Division. Locations will also be recorded on 1:1000 or 1:2000 scale base maps supplied or approved by the Division. Blower holes will be identified with a unique two letter abbreviation of the boat's name followed by consecutive numbers for each hole beginning at the start of the season and concluding at the end of the season.

In the log, brief descriptions and tag numbers of all artifacts recovered will be recorded for each blower hole so that the tag number is sufficient to determine the provenience of any artifact. Representative and all unusual blower hole profiles will be recorded noting the general order and thickness of recognizable sediments and the location of artifacts, fossils, or other useful information. Profiles which indicate that an earlier blower hole is being reopened should be noted. When possible a more accurate location description for important artifacts should be recorded, for example, in which quarter of the blower hole and from what sediment. Finally any interpretations of stratification or association which might be useful in understanding the process of artifact scatter and deposition should be noted.

4. Large Non-Structural Artifacts

Large objects like cannon and anchors will be tagged, left in place on the bottom and their UTM location recorded so that they may serve as a mapping and location references in future work. If such large objects interfere with underwater metal detector survey they may be moved to another location on the site with the approval of the Division or Cobb providing the original and new locations are recorded and mapped. Cannon, anchors, wood structure and other large objects will not be removed from the site unless transfer, storage, and conservation facilities approved by the Division and Cobb are available.

5. Structural Remains and Major Artifact Clusters

Because structural remains and major artifact clusters have more important association than scattered material, greater care is required in recording provenience. Structural remains will be photographed when possible, and mapped at 1:50 scale on base maps supplied or approved by the Division to show position of wooden structural members, spikes, and other artifacts as well as details of construction if visible. Maps will be tied to the UTM coordinate system by taking sextant angles to beach datums from buoys marking mapping reference points on the bottom. Structural remains will not be moved or undermined unless mapping results have been approved by the Division and Cobb and unless transfer, storage, and conservation facilities approved by the Division and Cobb are available.

6. Artifact Tagging

All recovered artifacts will be tagged individually or as a group when from a single provenience. Anchors and cannon recorded and left on the bottom will also be tagged. Tags will be plastic with permanent imprinted numbers and affixed to artifacts or bags of grouped artifacts by copper or stainless steel wire or nylon cord.

For small or delicate artifacts the tag may be placed in the same sealed protective container as the artifact. Large objects will be individually tagged. Small objects will be individually tagged if they are unique or have special value. Common objects such as pottery sherds, spikes, barrel hoop fragments, musket balls or lead sheathing can be bagged as a group and assigned a single tag number when from the same provenience. Bags will be of sufficient strength that they will not tear or break in handling or rot in storage before processing; cloth is recommended.

7. Artifact Handling

Artifacts may be divided into four categories; large objects, such as anchors, cannon, and hull structure; miscellaneous encrusted objects (E.O.'s); miscellaneous small identified non-precious artifacts; and identified unique or precious artifacts. After tagging and recording, artifacts in each category will be treated as follows:

a. Large Objects: These will be left in place on site until removal is approved by the Division and Cobb and wet storage facilities are available. Once removed, they should be handled so as to minimize damage and should be kept moist. They must not be allowed to remain out of water more than three days.

b. Miscellaneous Encrusted Objects: These fall into two categories: i) general identifiable non-fragile E.O.s; and, ii) interesting or fragile E.O.s. The former category will generally include barrel hoops, spikes or general ship's hardware. The latter category includes swords, knives, small tools and implements. All E.O.'s should be kept moist and E.O.'s in the latter category must be kept moist, while onboard and in transit to the storage and processing laboratory. Ballast stones and coquina rock may be separated from E.O.'s if their removal will facilitate handling and not break the E.O. E.O.'s will not be broken open on board; instead they will be processed on shore at the storage and laboratory facility.

c. Common Miscellaneous Small Identified Non-Precious Artifacts: These include such items as pottery sherds, spikes, barrel hoop fragments, musket balls, and lead sheathing. These may be bagged as a group from each blow hole or excavation unit. If iron is included, the bags or objects will be kept moist.

d. Identified Unique or Precious Artifacts: These will be assigned individual tags, unless they are clusters of coins, and placed in individual small plastic bags or protective jars to prevent damage. Unique and precious objects will be photographed at the processing facility and precious objects will be deposited with the bank on the day or evening of their recovery.

8. Artifact Processing and Stabilization

All artifacts recovered from sites are to be conveyed to the artifact processing and stabilization facility. This facility shall have storage and processing capability approved by the Division and Cobb and will provide

sufficient security to ensure the protection of the artifacts which it receives. In addition to the routine processing of E.O.'s and other artifacts needing stabilization and/or conservation, all precious artifacts-gold, silver and jewels--and unique artifacts will be photographed and the tag number and provenience data recorded on the photo back prior to being conveyed to the bank for safekeeping. At least two copies of these photographs will be prepared: one for the Division and one for Cobb. Final records and inventories of identified artifacts from each site and excavation unit will be prepared for each vessel's activities, and artifact overlay maps compiled at this facility so that results may be available to guide further salvage activities. Copies of all field records will be maintained at this facility during the salvage season and log sheet copies along with artifact photographs submitted to Cobb and the Division every two weeks.

9. Artifact Conservation

All fragile and unique artifacts of special interest will be sent to the Treasure Salvors, Inc., Conservation Laboratory in Key West for cleaning, stabilization and conservation/restoration. Interesting encrusted objects should also be sent to Key West to be X-rayed as soon as possible after recovery. Treasures Salvors, Inc. Conservation Laboratory staff and the Division Conservation Laboratory staff will cooperate closely in these activities.

10. Diver Safety

Spinning shafts, high vacuum suction intakes and propellers will be caged while divers are in the water. Dive flags will be displayed and standard dive safety precautions will be followed in accordance with DOL-OHSA Part 1910 Title 29, or Coast Guard DOT 197.202 Subchapter V, whichever applies.

11. Project Supervision

In order to ensure that the quality of information recorded is adequate and that the information is consolidated and interpreted in a professional manner, Cobb will provide a professional archaeologist and sufficient trained assistants to supervise the number of vessels used in exploration and salvage activities.

12. Reporting Requirements

A report on each site salvaged will be prepared by Cobb before the beginning of the next dive season. The Division may assist in these activities. Copies of each report, journal article or manuscript resulting from data derived from salvage and/or exploration activities will be provided to the Division by Cobb.

The Key West Citizen

Monroe County's Only Daily Newspaper

Key West, Florida, Sunday, October 9, 1983

Alliance seeks to preserve maritime history

BY WENDY TUCKER
Citizen reporter

To "team sports divers, shipwreck salvors and maritime archaeologists for the first time and to combine fun and the gathering of undersea knowledge, a new international organization is being formed — The Atlantic Alliance for Maritime Heritage Conservation.

Formed at a time when proposed federal legislation would seriously affect all those persons — sport divers alone are said to number more than a million in this country, the new Atlantic Alliance for Maritime Heritage Conservation is being led among others by two persons who once battled in federal court rooms over salvaging of sunken Spanish treasure galleons off Key West.

One is R. Duncan Mathewson III, director of archaeology for Key West-based Treasure Salvors Inc. and Odyssey Marine Exploration, a marine archaeologist who has worked for 10 years preserving finds and doing research on the 1622 wrecks of the sunken Spanish treasure galleons Nuestra Senora de Atocha and Santa Margarita some 40 miles west of Key West. Mathewson was chosen as chairman of the new Atlantic Alliance for Maritime Heritage Conservation.

R. Duncan Mathewson III

The other is Charles M. McKinney III, federal archaeologist with the U.S. Department of the Interior, who for many of the years when the government was battling with veteran diver and treasure hunter Mel Fisher and his Treasure Salvors Inc. was called upon to represent federal claims on the treasure finds. McKinney was chosen as the executive director or chief administrative officer of the new Atlantic Alliance.

A third key figure in the new alliance which has a national-international focus and a potential membership of several million persons is Daniel A. Koski-Karell of Arlington, Va., also an archaeologist. Koski-Karell is both treasurer-secretary of the new alliance and also serves as chairman of its executive or policy-setting arm, the new National Council on Underwater Archaeology.

The first meeting of the Atlantic Alliance was held in late September in Arlington, Va., and the just-formed National Council on Underwater Archaeology adopted and sent to Congress two resolutions that oppose pending proposed legislation that, it warned, would "severely restrict" recreational sport diving and underwater archaeological research, and would greatly inhibit public participation initiatives within the waters of the United States."

The proposed legislation is only one activity of many foreseen by the new Atlantic Alliance which will encompass not only the eastern seaboard of the United States, but also reach from Canada to the Caribbean Basin, the U.S. Gulf Coast and Mexico.

The alliance is described in its own non-profit corporation prospectus as a "coalition of heretofore diverse interest groups brought together in common bond to advance the understanding of the maritime heritage while advocating public participation at all levels of government and in the advancement of science."

Mathewson, of Little Torch Key, originally did his master's degree thesis on the Atocha wreck-site, and has gone on to become one of the most experienced shipwreck archaeologists in the country.

Next summer he will publish a book for sport divers, to be called "Undersea Treasures," an introduction to historic shipwreck archaeology in American waters.

This coming February, Mathewson will help the new Atlantic Alliance for Maritime Heritage Conservation to organize an archaeological workshop for Florida sport divers to be held in Key West. The event will be locally co-sponsored by Treasure Salvors Inc., and the Mel Fisher Maritime Heritage Society, with Fisher scheduled to be a key speaker.

Mathewson explains there are three major goals of the new alliance and its council.

"One is to become a legislative watchdog for future state and federal

Alliance

(Continued from Page 1)

that are used to sensitize the American diving public ... estimates are they (divers) up to three million out there ... to the fragile nature of these time capsules," says Mathewson, who identifies himself as a "strict historic preservationist."

Mathewson strongly believes that "By developing public awareness we are helping preserve our rich maritime past in a much more effective way than we could do by passing restrictive federal and state laws which limit divers from diving on shipwrecks. That's the basic philosophy ... of [illegible]

He and the alliance in the near future hopes to develop ... largely autonomous local chapters throughout the various regions.

Two other top leaders of the alliance who are also serving as regional chapter coordinators are Carol Vice Chairman Deborah C. Whitcraft of Long Beach Island, N.J., who is also North Atlantic regional chapter coordinator, and Second Vice Chairman Howard B. Tower of Jacksonville, Fla., who is also South Atlantic regional chapter coordinator.

STATEMENT OF JOHN C. FINE, CMAS DELEGATE, UNDERWATER SOCIETY OF AMERICA

Mr. FINE. Thank you, Mr. Chairman. I am sure that the introductory material that you have probably shows that I am a trained biologist as well as a lawyer.

That is not really why I am here. I have been diving since I was about 6. I hold the rank of master scuba instructor in the United States. I am a licensed French Government instructor.

I am here today representing the Underwater Society of America, which is composed of all of the States' councils of divers. I am the delegate to the World Underwater Federation. That is the United Nation's of underwater activities, scientific, sporting and technical, and based in Paris.

Speaking as a diver, I suppose, as to the legislation proposed, the antidote told by Ben Franklin as to recommending somebody for a job, as to this—well, the young fellow was certainly well meaning and dull witted. Franklin was obligated to write the letter, being requested to do so. He penned the note, "This is the kind of man that you want. He is the best of his kind."

We don't object to the fact that the legislation is well intended, but it certainly is not the best of its kind to accomplish the purposes that I think that all of us would like to accomplish.

I have some notion of where it is that divers would be coming from and what it is that they want. I suppose that you have to think that going down in the sea, sticking your bare feet in the sand and water, breathing in a breath of sea air and dreaming a little bit about meeting up with Long John Silver and coming up with tons of bullion and pieces of eight, as such. It is essentially that which captures the imagination of the people of this country. There are about 7 million people that dive. There is also that spiritual sense of the ocean.

Understand that the oceans are our last wilderness, our last frontier. We stand at the border of the seas, as the pioneers stood in leather stockings at the border of the wilderness areas to explore and to enjoy that exploration. It is that sense of freedom.

For now, there is a sense of discovery, a sense of adventure. There is the freedom to seek the adventure, that dream. They are the consideration most important to divers.

You have got to note in everything that has been prepared for you and as to those that would sponsor this kind of legislation, that they are careful to say it won't affect divers. They are right. Certainly because of the millions of divers, it is a well-organized constituency. Now, that constituency is very concerned. The people that have spoken this morning advocated certain kinds of Federal legislation. They say to leave it to the States. In that regard, I am reminded of my conversation with Anne Gorsuch at the White House. She was the EPA administrator in 1981. I talked about these problems.

To handle an interstate problem and the magnitude of proportion—well, all of us know what has occurred. This is when "Just give it to the States" has gone forward. There are 26 States that have some kind of statutes. Most of those laws are incompetent to be able to deal with the kinds of shipwrecks that Mr. Fisher spoke

about this morning. Perhaps a rowboat sunk or an Indian canoe sunk in a lake a few hundred years ago, then they might be able to competently handle that. They don't have the staff or the resources. The statutes were not, were never intended to encompass what the Federal admiralty law does encompass, the territorial waters of the United States and the control zones.

You must know that is not necessarily what is written or said that is going to dictate the policies once the State implements rules and regulations, as many proponents of this legislation will have you believe—well, let's talk in human terms.

I have been teaching diving a long time. One of my students, a college graduate, was very interested in participating with marine archeologists in the work that they had undertaken. The university that was the most involved was the university which has now moved to the State of Texas. The letter that she received back from these professionals brought her to tears. She came to me with tears in her eyes and said, "Look, what arrogance. We can train archeologists to dive but we certainly don't need divers who are untrained in any aspect to participate with us in this project."

Now, they called him the mad blaster of Agda. That is a little village on the Mediterranean. It was on the trade routes that the Romans used in early times. My friend blasted his house out of the rocks. He became a citizen of this little community. He started diving because he was right on the Mediterranean seacoast. Slowly but surely, he found the traces of Roman civilization. As he dug into the sand, he found what has perhaps become the most valuable, and certainly the most talked about statue ever recovered under the sea.

After testifying before the House Committee I got hold of one of the magazines I edited in France, the October issue, and it was there. It shows under the headline "Amateur archeologists efforts—" The Government of France has decided after——

Senator WALLOP. Could you move closer to the mike, please.

Mr. FINE. The Government of France has now decided after all these years of his organization and of his finding of these valuable treasures that he is no longer competent t[illegible]it. They are going to have bureaucrats do it. Understand that the French bureaucrats, like the American bureaucrats, lost the arm once this was turned over to them. This beautiful Greek statue probably dates to the sixth century before the birth of Christ; it is present, but without the arm, an arm lost by the conservation authorities of the French Government.

Now, those are the realities. Greed makes no actual distinction between the secret of wisdom and the secret of gold. You will find that many academics are plainly greedy. This is whether they want to be the first to publish, first to claim the glory, and there is an awful lot of meanness going on. Mr. Fisher didn't say it because he is too much of a gentleman to say it. I will tell you. There is an awful lot of meanness going on with that litigation involving his finding of this treasure in Florida. Florida State laws wouldn't apply to that site anyway. The site is located beyond the Keys and 40 miles offshore. U.S. territorial water would be 3 miles and the control zone of 12 miles. Now, if the Law of the Sea Treaty passes, a 200 mile control zone of some kind. Florida law would never have

applied to that. They beat a contract out of him, threatening him with harassment and arrest and with all kinds of things.

Then, when the treasure was found, they were not interested in the twigs of timber or the preservation of the broken jars of pottery. They wanted his gold and 25 percent of that gold. They flat told his lawyers litigating the case, "If you don't come across, we'll tie you up in court until you die, until you're forced to give up."

Understand that Fisher was just a normal regular guy. He came across from California following a dream. It took him 11 years to find this. Just after he found it, when he talks about risk, the salvage tug he was using overturned. His oldest son, his son's new wife, they drowned inside that with a friend of his. They drowned. They died. That nearly devastated him. In the memory to his son's dream and to his dream, he continued and found the rest of the evidence of the *Santa Margarita.*

You know, when you talk about risk, the boring State bureaucrats, then I suppose that the only risk they get is the risk of boils from sitting around writing up State grants to put on more people for the taxpayers to pay for.

People like Fisher endured the hardship, the risk, camped out in a trailer and didn't eat because he didn't have the money to eat, or they didn't, in pursuing that dream and finding those things that are our legacy. Divers have found many valuable and beautiful things under the sea. They will. They are out there. They have the eyes to see. And, of course, they would be the ones naturally to be in a position to find these beautiful and important things. It is the divers that provide the impetus for shipwreck preservation projects. They contribute the money that will sponsor these private enterprise systems. They have, in fact, provided the impetus for the shipwreck living museums, that is, the Shipwreck Living Museum in what was part of the United States Trust Territory. It is those 46 ships sunk by—that is Japanese ships sunk by the Americans during the Second World War. Now no divers can remove any artifacts from those ships. We can enjoy them until they crumble into the sea. But they are living memorials to what was the folly of war and they are now overgrown with coral and living gardens that provide a study, a place for scientists to study coral growth, and a flower garden for photographers and divers to enjoy forever. It is an economic benefit to a land that receives very few tourists with very few dollars coming in.

Any State, from North Carolina to Florida, that has divers know that this is economically important. There are very few people that seek treasure professionally. I guess that I have spoken to most of them in my research for another book. They are motivated probably not so much from profit, but from the urge to discover. Nothing would give them more pleasure than to take their grandchildren to the Smithsonian and say, "Look at that." Their name would be engraved on this as being the finder to enable them to show off with pride that discovery.

There are a number of statutes provided with my written testimony. One is one that I think that you ought to consider seriously. It is the law that relates to the island of Bermuda. I have also probably provided a copy of English laws that relate to archeological or historic shipwrecks.

You know, Bermuda was an island of wreckers. If the ships didn't wreck there, the people of Bermuda in the early days helped them along.

There is a cute story that is told about the Sunday church service. It was being interrupted in the back by a group of people leaving. The pastor looks out and said, "What is going on?" One of the people in the congregation called back, "The ship is wrecked, pastor." The pastor said, "Sit down everyone until I say the benediction. Then we will all have a fair chance to get at it."

Well, arising out of that unique location in Bermuda where there are 400 ships of archeological significance, the Government decided what to do about it. They had two choices, to pass the kind of law that is iron-fisted and say no to the divers, the divers can't touch it, can't excavate, or try to and engage in a partnership with those that would seek out wrecks of historical significance. They chose the latter. They decided to treat people fairly. Let free enterprise search is the essence of what they do in Bermuda. Let the people that find anything declare those finds. They are very willing to do that. They like the publicity that comes out of it. They claim their glory. The finds, by the way, are much more valuable if they can be documented to a particular site. There are millions of these pieces of silver eight laying around. You can't get $50 each for them in Key West. But if you can get an original piece of eight from a particular shipwreck that is far more historic in value and, in fact sentimental value to certain collectors.

There are two pressing reasons why they would declare the wreck. They can excavate it if they are competent to do so. If not, they do it in cooperation with the Government archeologists and projects.

Now, in the United States, this could be done under a Federal license.

The Government of Bermuda has the first option to buy any of the artifacts they desire from the salvor. He has no right to refuse them. It is at a fair and agreed-upon price.

If you treat the divers, and, after all, I think all of the people that go out looking for the treasure, that, at the base, all of these people are divers with a dream and perhaps with more of a sense of adventure than most, but if you treat these people unfairly, then you are going to have a tremendous black market. Yes, you are going to have the ravage of these shipwrecks and they will grab anything that is valuable and just sell it on the black market. No amount of legislation has ever stopped the mine and tomb robbers in the Americas, nor those that have ravaged Pompeii and the Greek artifacts from the terrestrial findings, nor, I suppose, will it. Believe me, no ocean can be patrolled even by an army of patrollers, the Marine Fisheries or the Navy. So you really have to enter into a partnership.

Our view is, yes, that the maritime salvage law works adequately in most cases. If this committee decides there is inadequate protection for historic shipwrecks, then perhaps some sort of amendment to the maritime salvage law that would protect both the interest of the diver that finds the wreck and the proprietory interests all of the people of the world have and the knowledge that can be gotten from it, that this would make sense.

I commend the statutes of Bermuda to you in this regard.
Thank you, Mr. Chairman.
[The prepared statement of Mr. Fine follows:]

Written testimony of John C. Fine before U.S. Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands and Reserved Water.

S1504

No amount of legislation is going to prevent looting of historical sites. Treasures and artifacts of commercial worth have been traded on the black market for centuries. What colonial powers didn't loot to stock their museums private collectors bought from a network of fine arts procurers, ever-reday to turn a fast profit by exporting treasures of of Pompeii, the Nile or Grecian heritage.

What poorly conceived legislation can do, is increase this black market by driving treasure hunters underground. In the present circumstances, they are already underwater. What I think legislation should do is strike a fair balance between two things:

1. The international interest in acquiring knowledge derived from historical shipwrecks.

2. The grand adventurous spirit that sets men and women out in quest of them.

To the myopic professor whose life is spent filing papers for government grants, competing with fellows for the glory of first publishing, the treasure hunter is at best a rogue. To the treasure diver who has spent 11 years seeking a shipwreck and, against all odds, finding it, then enduring the harshest of personal tragedies through the loss of a son, daughter-in-law, and friend, the academic, bureaucratic and legalistic can represent a threat far greater than the perils of the sea. Greed makes no distinction between the seeker of gold and the seeker of wisdom. In achieving their ends, the scientist and salvor both seek glory, public acclaim and riches, be it in the form of royalties from a book, a full-professorship or a handful of gold coins.

It is by taking advantage of the glory syndrome that this or any legislation can accomplish a worthwhile objective: To encourage the discovery of shipwrecks and preserve the evidence that will provide insight into history. If a person can find a shipwreck through personal genious, daring and the expenditure of time and money and be assured that if they play by a just set of rules they will be treated fairly, then the treasure hunter will declare the find. The treasure hunter will eagerly pronounce it to the world and claim the glory. Make rules that treat a diver unfairly, brushing the finder of a shipwreck aside brusquely so another can claim it then you will make the salvor a thief. The treasure diver will surely gobble up the gold, forsake the historical artifacts and excavate shipwrecks in a fashion designed to make the fastest possible get-away. Say no to the adventurer and discovery will stop altogether.

Legislation has not stopped Maya and Inca grave robbers, Egyptian tomb thieves or traffickers in classical treasures from Italy or Greece. In all of these countries, strict archaeological protection laws have been in effect for many years.

No patrol force is equipped to police the sea. No government is prepared to foot the bill to search the seas then excavate and save each shipwreck found. Government should not be expected to pay for university grants, disfavoring free enterprise which invests private funds and can, under proper circumstances, accomplish the same thing.

Government must be as wary of the simple argument by academics that say, "Stop them, they are uneducated boors who are sacking the shipwrecks, pay us and let us do it" as the government must discourage the zealous treasure diver who would have the way clear to dynamite a wreck site to oblivion to get at the gold. When all the professional treasure divers, so called, are counted, the total would be very small. When the time these adventurers invest and the expenses they've had over the years, is added up and compared to their finds, then most could earn better wages as a letter carrier, grocer, clerk, or fisherman.

In all of this, what about the ordinary person? The week-end diving enthusiast who dons mask, fins and snorkle and sets out for a days fun. What do they want? It is they whom I represent best, both as the U.S. representative to the World Underwater Federation, CMAS, which is the United Nations of underwater activities headquartered in Paris and the representative of the Underwater Society of America, the U.S. national non-profit sport diving organization.

The average diver wants to enjoy the thrill of discovery by seeing, touching and taking. If they're told not to take, they'll likely comply as long as they're told why. With shipwrecks in mind, there should always be some things the average sport diver can take and treasure even if it is only an old milk bottle from the forties found in a lake or a brass porthole ripped out of the side of some great lakes steamer polished bright so one can see a relection in the brass. The artifact becomes a living room show piece to the diver, a monstrosity that has to be cleaned to the non-diving spouse.

The sport diver wants fun. They want the freedom to hunt up souvenirs of the dive, a laudatory purpose, since most of them collect stuff that any self-respecting junkman would leave if the same itme was abandoned in the gutter.

In all of the above there is the flexibility in the oceans' bounty to accomplish the goal of proper legislation while preserving the spirit of is purpose.

Perhaps some anecdotes will help illustrate the point I'm trying to make.

- I returned from the Mediterranean some years back, having dived on some shipwreck sites that dated to Greek and Roman times, seeing artifacts that had not been seen for more than two thousand years. BAck in the U.S. I called one of the foremost experts in the field to get some help in identification of an object in one of my pictures. At the end of the conversation, in a by-the-way, this world renowned scientist said, "If you have any amphorae to flog, let me know. I always have several people who are interested in picking them up if the price is right."

- In a carefully designed environmental impact program operated under legislative mandate, a site was surveyed. Government funds expended to let shipwreck experts comb through whatever was there to determine what was of historic or archaeologic importance before clearance. In the end a lot was indentified but it was determined that none of the major hulks could be saved. Some loads of artifacts were designated for shipment to a historical society. Due to a mix up, even under the scientists' watchful eye, the shipment went to sea in a burn barge.

- In Bermuda the government bought the "piece maitresse" of a divers find. It was an emerald studded gold cross keep in their museum. The object in government custody was switched. A plastic cross with green painted emeralds which replaced it remains in the custody of the police; the original in some private collector's vault, no doubt.

- I wrote an article describing an old ferry boat that hauled passengers from New York to New Jersey. An individual, on the basis of my article, made a plea to a major New York newspaper to mount a campaign to save the old ferry since he rode it as a kid and thought it was a grand piece of history. Unfortunately the old derelict was scrapped before these excited citizens could (and would have) raised money to make a museum ship out of a piece of no-so-old but remembered local history.

- In the case of whales, where Federal legislation has rather carefully controlled access, and scientists with a good purpose can perform certain functions under the license of the National Marine Fisheries Service, access to autopsy results required for a special article in a major magazine was denied by the Federal licensee. The licensee insisted they were protecting their research and were publishing their own material, thus effectively de-

nying public access. An analogy that points up the protectiveness some academics feel once they get hold of a project or situation.

- A treasure diver bemoaning the fact that legislation might curtail his activities, affirmed that no law could stop him. The diver said he would only operate secretly and sell the artifacts to clandestine buyers, something he was loathe to do since he wished to get into the pages of National Geographic some day.

- In a developing nation, fishermen found a sipwreck containing valuable Chinese porcelain. In the first day, four divers died, diving deep repetitively, each time loading up bags with the pottery and going back down until killed by the dreaded bends. When the government got wind of the goings-on, which by this time was hard to ignore, they sent archaeologists who dutifully recorded and marked each find. They used a felt tip pen which would not come off the porous porcelain ruining the most valuable pottery wares. When word of the destruction got back to the capital, orders came back to the site not to mark the front of the pottery. The field workers marked the back and the felt tip ink eeked through to the front.

- A French museum was the repository of seized amphorae. Divers declared them, turned in their finds and the government kept them. The museum had plenty of each type, too many in fact and when they moved, the amphorae were destroyed since there was no room for them. No real importance, sentimental or otherwise was attached to them. They were examples of what was already a glut in the museum's collection. No doubt each of the divers, ordinary week-end enthusiasts, would have forever cherished their finds far more seriously than the government that confiscated and destroyed them.

- The diver who found the single most beautiful example of statuary underwater in the Mediterranean told me at an overseas conference recently that although he discovered the site that yielded this most beautiful Greek statue and many other artifacts, founded a small society to dig and preserve the marine artifacts under the auspices of the French government, that he is disdained by "academics" who demean the fact that he has no schooling and is only a diver with a sense of culture and sensitivity. Hurty by the snobism, the diver has grown used to it and continues to contribute to the knowledge of mankind, his finds displayed in the Louvre in Paris, his hurt from wounds inflicted through jealously hidden in his soul.

- In Truk State, Micronesia, the government has passed local laws protecting the Japanese shipwrecks sunk during World War II. Divers can visit the shipwrecks but not take artifacts or disturb them. These Japanes freighters, tankers, supply ships, patrollers and airplanes attract hundreds of divers each year who enjoy the beauty of this natural underwater park without taking artifacts or destroying the shipwrecks. Divers provide one of the most important sources of income to the islands and the travel and tourist industries that serve them.

- In the U.S. divers have placed dedication plaques and have lobbied for the creation of underwater parks, raising funds for the preservation of shipwreck sites. The sentimental and historical value of these sites are not only appreciated by divers, but respected by them.

These are only examples from which some sense of shipwrecks and divers can be gleaned. Sport divers have participated in projects and have provided the muscle power that no reasonable budget could muster if professional divers had to be paid. Divers have a rare sense of esprit de corps, and a practical investment in the oceans and things maritime. It is they that benefit and they that lose after all. It is the diver that is most interested in shipwreck finds and marine artifact displays. They hold film festivals and artifact shows, swap tales and enjoy films about shipwrecks. Divers may also be the ones who rummage around and disturb things, but with proper guidance the harm can be minimized.

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A law that satisfies the diver, the marine archaeologist, the treasure salvor and the conscience that says knowledge and artifacts of historical value should not be lost or destroyed is one which permits individuals to find shipwrecks, declare their finds, be licensed, if competent, to excavate them properly, and then let government buy any artifacts it wants for a fair price with the right of first refusal. After all what better way for a treasure salvor to realize a life's ambition, to be paid for the artifacts then be able to take grandchildren to see what was found with a little plaque bearing the finder's name in the Smithsonian. Better there than in a Shiek's boudoir. Questions dealing with what is a shipwreck, how old and how historical, can be left to a volunteer national advisory board.

If the Federal government were to assign responsibility for administration of a shipwreck monitoring program to any governmental body, the bureaucratic wail for staff and funds would echo through the hall of Congress. Whatever legislation is passed is bound to result in litigation, for when has the finding of gold not resulted in lawyers, like the Royal Assayers in Spain's New World, taking the first bite.

When properly managed, shipwrecks attract divers, each with the enthusiasm of exploring history to take pictures, poke around, and take souvenirs when allowed. To the merchant community that grows up around any such touristic enterprise, the divers stay in hotels, eat meals, drink at local establishments, buy T-shirts and local wares. Divers travel and spend money. Any state or nation with diveable shipwrecks can certainly count them a touristic attraction bringing money into their economy. Where this is so, it is the local dive guides and travel operators who help police the shipwreck sites since preservation of the wreck sites ensures their continued livelihood.

If Federal legislation is required at all, then it should be designed to give deference to the Law of Salvage. It is the wisdom of salvage law over the centuries that encourages salvage and good acts by rewarding them, not punishing the salvor, a word derived from "to save".

The diver like the average American citizen wants freedom to enjoy the quality of life in the United States with minimal interference from government, certainly limited interference with sport and recreation pursuits, perhaps the last refuge from day to day regulated life. If interference is to be tolerated, then it should be sufficient only to codify the principle that individuals whose business it is to find and exploit shipwrecks ought to do it in a way so that all humankind can benefit.

Senator WALLOP. Thank you, Mr. Fine.

Mr. Mathewson, would you agree with the statement of Dr. Wendorf that the State archeological office could not keep adequate supervision or inventory of a commercial salvor operation that was organized correctly?

Mr. MATHEWSON. A salvage operation on the water is very difficult to supervise by anybody. I think that a well structured group and organized salvage program where you have trained field agents on the boat supervised by a staff could organize good recovery procedures which would maximize the collection of information from a wreck site.

The problem is to develop the right interpersonal skills which are required when you dovetail regulation, that is, regulatory agency concerns, with a salvage operation, Mr. Chairman.

Senator WALLOP. What concerns me in the sear[illegible] for some level of understanding of all this is the claim that only an operation that is run by archeologists could protect the archeological values. I gather that to be the implication.

Mr. MATHEWSON. I think that is a bit of an overstatement. The archeologists are interested in special relationships. We are more concerned really with the contextual situation of artifacts rather than finding the artifacts themselves. What we are particularly concerned with are the special relationships on the seabed before artifacts are removed, whether this be a gold bar, an anchor or spike. It makes no difference. What I have tried to do over my years of working with the commercial salvors is to develop the procedures that would get the special relationships at the same time that we bring up the objects. This could be done. It is possible to be done. The people off Louisiana and the people off other coastal States, they have actively worked with the commercial groups and sport divers, this could be done with them.

Senator WALLOP. In your master's thesis you stated that there was a sort of dissertation, if you will, on the areas as to the archeological and commercial interests, that they worked well together; and those where they do not.

Would it be possible for you to submit to the committee a summary of your ideas, such as where they do and do not work well.

Mr. MATHEWSON. Yes. I'd be pleased to do that, Mr. Chairman.

Senator WALLOP. I gather from each of your testimonies that you are suggesting that the maritime law with perhaps some amendment might be a better way to protect the public interest than the proposal that is in front of the committee. Is that a correct understanding on my part of your testimony here?

Mr. MATHEWSON. Yes. I believe what we have really got to do is to sit back and to look at some of the problems that a number of us raised today concerning what needs to be done in terms of getting a workable law that will involve the public. We don't want to exclude the public or sport divers. We don't want that. Right or wrong, the sport divers out there are over a million strong and they are livid about what is going on without their providing any input.

I am concerned also with the ongoing research that we can do very effectively with private capital. I am delighted Dr. Foster and Harry Allendorfer and everybody is talking about private enter-

prise. I think what we have to do is to codify present Federal admiralty law. If we can take the example, a Florida example, which has been in place for almost a year, and it we can look at that, then we can try to see how we can codify that to develop a uniform policy for all coastal States working under the Federal admiralty to work out a cooperative agreement so that everybody will have some input to a very good program.

Senator WALLOP. Let me state to you that there are millions of sport divers that feel much is going on without their input. I stated at the beginning that the hearing record would remain open for 2 weeks. Clearly, there is ample opportunity for anybody who has questions or if there is agreement or disagreement, or if they have suggestions for solutions, that they can do this. The witness list has been wide open. From this morning's testimony, there appears to be at least adequate blame being placed on both sides of the issue for the inadequacy in protecting the public interest. We have heard without specifics rape and pillage and the dynamiting. I would hope those who made those charges will also provide some documentation of this. I would appreciate it if you, Mr. Fine, and Mr. Mathewson, and others who have knowledge of areas in which the scientific community has not always proceeded with a standard of ethics in the public interest and with the historical and archeological interests in mind, that you could provide us, as you did with the case of the statue in the Mediterranean any instances of that that you know. I am interested in seeing if there isn't some way in which this public that we seek to protect the interest of in all of these things cannot actually end up with the interest protected instead of having it shift from one side to the other and still be lacking in the knowledge, lacking in the ability to share in and appreciate some of these wonders that have been discovered.

Clearly, there has been a lot put into museums. There is a rather interesting brochure that has been placed in front of the committee. It cannot be that the only thing of interest and knowledge has been found by only the scientific community, and it cannot be that the only things of interest and knowledge have been found by the commercial people. There must be some area where we can make that interest come together. I think some of it may be found in suggestions from your thesis.

With that, I will just invite your further comments for the hearing record.

Mr. FINE. Yes.

Mr. MATHEWSON. Thank you.

Senator WALLOP. I will invite further comments from those who testified earlier today and those who may, upon learning of this hearing, wish to make some expansion of our understanding of the scope and nature of the problem that we face.

With that, the hearing on S. 1504 is completed and we will now hear from Mr. William J. Whalen.

STATEMENT OF WILLIAM J. WHALEN, EXECUTIVE DIRECTOR, NATIONAL MARITIME MUSEUM ASSOCIATION

Mr. WHALEN. Thank you, Mr. Chairman.

I am appearing before you today to strongly support the passage of legislation that will give substantial long-term support to the historic ship collection located within the Golden Gate National Recreation Area in San Francisco.

The maintenance of wooden ships is an extremely costly proposition. In fact, historic ships represent one of the most difficult preservation challenges that the National Park Service has.

The plight of the steam schooner *Wapama,* one of seven large vessels in the collection, is a prime example of the critical need that exists in this program.

Now, because the National Park Service has been, that is, has not been able to obtain appropriated funds to restore this vessel, and is similarly limited in their ability to care for the six other ships in this collection, our association is proposing an alternative approach to supplement the current strategy.

The bill that is before you would authorize the National Park Service to retain the proceeds from the rental of a large wooden drydock and utilize this to help in the restoration of the *Wapama* and to help defray the high maintenance cost for the entire ship collection.

While the intent of Senate bill 1647 is commensurate with the needs of the Park Service, its specific language would have a negative effect on local managemement. The flexibility with respect to the existing fiscal authority that currently benefits the cultural resources of the Park are affected.

Therefore, we are suggesting that the language be modified in accordance with the attachment to my written testimony.

Thank you very much for your consideration of this important legislation. If passed, it will accrue significant benefits toward the preservation of our maritime heritage at little or no direct cost to the taxpayers.

At this time I would be happy to answer any questions that you might have, Mr. Chairman.

[The prepared statement of Mr. Whalen follows:]

STATEMENT OF

WILLIAM J. WHALEN, EXECUTIVE DIRECTOR

NATIONAL MARITIME MUSEUM ASSOCIATION

BEFORE THE

U. S. SENATE COMMITTEE

ON

ENERGY & NATURAL RESOURCES

SUBCOMMITTEE

ON

PUBLIC LANDS

&

RESERVED WATERS

MY NAME IS WILLIAM J. WHALEN. I AM THE EXECUTIVE DIRECTOR OF THE NATIONAL MARITIME MUSEUM ASSOCIATION IN SAN FRANCISCO. I'M APPEARING BEFORE YOU TODAY TO STRONGLY SUPPORT THE PASSAGE OF LEGISLATION THAT WILL GIVE SUBSTANTIAL LONG TERM SUPPORT TO THE HISTORIC SHIP COLLECTION NOW LOCATED WITHIN THE GOLDEN GATE NATIONAL RECREATION AREA.

AS YOU MAY KNOW THE MAINTENANCE OF WOODEN SHIPS IS AN EXTREMELY COSTLY PROPOSITION. IN FACT HISTORIC SHIPS REPRESENT ONE OF THE MOST DIFFICULT PRESERVATION CHALLENGES IN THE NATIONAL PARK SYSTEM. THE PLIGHT OF THE STEAM SCHOONER WAPAMA, ONE OF SEVEN LARGE VESSELS IN THE COLLECTION, IS A PRIME EXAMPLE OF THE CRITICAL NEEDS THAT EXIST WITHIN THIS PROGRAM.

THE WAPAMA IS A 68 YEAR OLD 200 FOOT LONG WOODEN STEAMSHIP OF A TYPE THAT ONCE FORMED THE BACKBONE OF 19TH AND 20TH CENTURY WEST COAST MARITIME TRADE AND COMMERCE, CARRYING BOTH PASSENGERS AND CARGO BETWEEN PORTS RANGING FROM ALASKA TO MEXICO. IT IS SAFE TO SPECULATE THAT MUCH OF THE MATERIAL THAT WENT INTO THE RE-BUILDING OF SAN FRANCISCO AFTER THE GREAT EARTHQUAKE OF 1906 WAS CARRIED ON WHAT WAS ONCE A FLEET OF MORE THAN 200 OF THESE HARDY VESSELS.

NOT ONLY IS THE WAPAMA SIGNIFICANT TO WEST COAST MARITIME HISTORY BUT SHE IS THE ONLY AMERICAN COASTWISE WOODEN STEAMSHIP LEFT AFLOAT. SHE IS ALSO UNIQUE IN HER CONSTRUCTION AND RATES AS A REMARKABLE PIECE OF MARINE ARCHITECTURE. HER NATIONAL SIGNIFICANCE AS A RELIC OF OUR MARITIME PAST IS APPROPRIATELY RECOGNIZED ON THE NATIONAL REGISTER OF HISTORIC PLACES AND IT CURRENTLY APPEARS AS IF HER NOMINATION TO

NATIONAL HISTORIC LANDMARK STATUS WILL ALSO BE CONFIRMED. BUT UNFORTUNATELY AFTER MORE THAN 20 YEARS OF FAITHFUL WATERFRONT SERVICE AS A MUSEUM SHIP FOR 3 YEARS SHE HAS BEEN LANGUISHING HIGH AND DRY ON A BARGE IN OAKLAND--WAITING FOR $5 MILLION WORTH OF BADLY NEEDED REPAIRS. SHE WOULD HAVE SUNK AT HER OLD MOORINGS NEAR FISHERMAN'S WHARF IF SHE HADN'T BEEN MOVED. NOW AS SHE SITS OUT OF THE WATER SHE IS DRYING OUT TO A DANGEROUS DEGREE. AS A RESULT, HER SEAMS ARE PARTING, HER TIMBERS ARE SHRINKING AND TWISTING, HER SHAPE IS DISTORTING AND DRY ROT IS ACCELERATING.

BECAUSE THE NATIONAL PARK SERVICE HAS NOT BEEN ABLE TO OBTAIN APPROPRIATED FUNDS TO RESTORE THIS VESSEL AND IS SIMILARLY LIMITED IN THEIR ABILITY TO CARE FOR THE SIX OTHER SHIPS IN THE COLLECTION OUR ASSOCIATION IS PROPOSING AN ALTERNATIVE APPROACH TO SUPPLEMENT THEIR CURRENT BUDGET.

THE BILL BEFORE YOU WOULD AUTHORIZE THE NATIONAL PARK SERVICE TO RETAIN THE PROCEEDS FROM THE RENTAL OF A LARGE FLOATING DRY DOCK AND UTILIZE THEM TO HELP IN THE RESTORATION OF THE WAPAMA AND TO HELP DEFRAY THE HIGH MAINTENANCE COSTS FOR THE ENTIRE SHIP COLLECTION.

WHILE THE INTENT OF SENATE BILL #1647 IS COMMENSURATE WITH OUR NEEDS, ITS SPECIFIC LANGUAGE WOULD HAVE A NEGATIVE IMPACT ON MANAGEMENT FLEXIBILITY WITH RESPECT TO EXISTING FISCAL AUTHORITY THAT CURRENTLY BENEFITS THE CULTURAL RESOURCES OF THE PARK. THEREFORE, WE ARE REQUESTING THAT THE LANGUAGE BE MODIFIED IN ACCORDANCE WITH THE ATTACHMENT TO MY WRITTEN STATEMENT.

THANKS FOR YOUR CONSIDERATION OF THIS IMPORTANT LEGISLATION. IF PASSED IT WILL ACCRUE SIGNIFICANT BENEFITS TOWARD THE PRESERVATION OF OUR MARITIME HERITAGE AT NO DIRECT COST TO THE TAXPAYER.

A BILL

To amend the Act of October 27, 1972, establishing the Golden Gate National Recreation Area, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled; That section 4(f) of the Act of October 27, 1972 (86 Stat. 1299, 1302; 16 U.S. C. 460bb-3), establishing the Golden Gate National Recreation Area in the State of California, is amended by—

(1) inserting after "Restaurant," the words "the AFDL-38 Drydock vessel and other heavy marine equipment,";

(2) inserting after "properties" the words ", and from the rental of said vessel and other heavy marine equipment,";

(3) inserting after "expenses and" the words "similar expenses of said vessel and equipment";

(4) inserting after "administration of said parcels" in the second proviso the words "and said vessel and other heavy marine equipment'; and

(5) inserting after "property" in the second proviso the words ",and said vessel and other heavy marine equipment,".

Attachment

Senator WALLOP. Thank you, Mr. Whalen. It is nice to see you again.

I would ask at this time that a statement on S. 1647 from Senator Cranston be inserted in the record.

[The prepared statement of Senator Cranston follows:]

STATEMENT BY SENATOR ALAN CRANSTON BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER IN SUPPORT OF S. 1647, TO AUTHORIZE THE USE OF FUNDS FROM RENTAL OF FLOATING DRYDOCK AND OTHER MARINE EQUIPMENT TO SUPPORT THE NATIONAL MARITIME MUSEUM IN SAN FRANCISCO, CALIFORNIA

October 21, 1983

Mr. Chairman, I'm very pleased to have the opportunity to present testimony this morning in support of S. 1647, legislation Senator Wilson and I have introduced to authorize the Secretary of the Interior to use revenues acquired from the leasing of National Park Service drydock facilities and other heavy marine equipment for the maintenance and restoration of historic ships at the Golden Gate National Recreation Area in California.

By way of background, the National Park Service owns seven historic ships which are part of the National Maritime Museum in the Golden Gate National Recreation Area. These ships are the HERCULES, BALCLUTHA, EUREKA, ALMA, C.A. THAYER, EPPLETON HALL and WAPAMA. In terms of size and tonnage, this collection of vessels represents the largest single fleet of historic ships anywhere in the world.

Unfortunately, all of the ships need extensive maintenance and restoration, particularly the WAPAMA. This ship is rapidly deteriorating and repairs must be made soon -- before structural damage becomes irreversible. Built in Saint Helens, Oregon in 1915, 205 feet long, 945 gross tons, the WAPAMA is the last remaining example of 225 wooden steam schooners that transported lumber to ports along the west coast in the early part of this century. With the passing away of wind-driven sailing ships around 1900, steam schooners became a principal force in the development of the rich timber lands of the west coast, which in turn was essential to the growth of the west as a whole. Designed for the rough waters of the Pacific Ocean and faster than sailing ships, these steam schooners carried nearly all the lumber used to build homes and railways for the great migration to the west. The WAPAMA carried freight and passengers up and down the pacific coast from 1915 to 1947 when the ship struck a rock in Alaskan waters damaging a forward portion of her hull. The WAPAMA was repaired on the surface, but no structural repairs were done.

Since 1962 the WAPAMA has been a museum ship, housed first at the San Francisco Maritime State Historic Park and later at the Golden Gate National Recreation Area's National Maritime Museum. The WAPAMA is listed on the National Register and is currently under consideration for possible designation as a National Historic Landmark. The National Park Service has completed a study of the WAPAMA for this purpose and the nomination will be reviewed next week by the National Park System Advisory Board.

Nonetheless, inadequate attention has been given with respect to the ship's repair. In 1979, the WAPAMA was removed from display at the National Maritime Museum because of its deteriorating condition. Since then, the Department of the Interior has not requested the funds necessary for the restoration. It's my understanding that the Park Service, given budget constraints, has been seeking a means to undertake the repair work at no cost to the taxpayers. My bill, S. 1647, provides such a means.

Mr. Chairman, the National Park Service also owns the Haslett Warehouse, Cliff House properties, Louis' Restaurant, AFDL-38 Drydock and other heavy marine equipment located in the San Francisco Bay Area. The Haslett Warehouse, Cliff House Properties and Louis' Restaurant are presently leased out and are projected to produce $1.3 million in revenues this year. I understand lease of the drydock would provide an additional $75,000 in revenue annually. S. 1647 expands current lease authority to include the AFDL-38 Drydock and other heavy marine equipment, with the clear expectation that Park Service receipts will increase. In addition S. 1647 amends existing law to provide that the revenues received be set aside exclusively for restoration and maintenance of the historic ships at GGNRA.

Mr. Chairman, the WAPAMA and other ships at GGNRA are one-of-a-kind vessels. Moreover, they are already in federal ownership. We should not allow them to continue to deteriorate. Rather, we should protect our national investment and preserve these vessels for the public's knowledge and enjoyment. Enactment of S. 1647 would solve the problem of the current lack of funding. I urge the Subcommittee to consider it favorably so we can save an important link with the past of the American west.

Senator WALLOP. I appreciate the intent and purpose of this legislation and generally support it.

Do you have an estimate, this National Maritime Museum Association, of what the dollar figures are that are needed over the next several years?

Mr. WHALEN. The figure that we have been given by the National Park Service earlier is a broad range, but we are talking in the terms to bring those seven ships up to standard, then we are starting then at about $25 million. They feel that if they had an appropriation of about $2.5 million per year, they could operate over the next 10 or 12 years and be able to bring them up to a standard. Obviously, there is an infusion of dollars to about 5 years to bring them up quickly, that is, if there was, then I think it would be more beneficial for them.

Senator WALLOP. The administration suggested that, among other things, a visitor's fee might be charged for the 500,000 visitors a year.

Mr. WHALEN. This is certainly something that our association would very much like to see, a fee imposed on the vessels there. Then those funds to be retained there then at the park. We would very much like to see that happen.

I understand there have been conversations with the two local Members of the House from San Francisco. They seem to think the same way. There may be some legislation even being introduced that would allow this.

Senator WALLOP. That is consistent with some of my thinking on the national parks. I believe that we, in many instances, should have a fee, and those fees should remain primarily with the park collection. We had one area where we tried it and didn't get very far, but it is where the park would have some incentive for collecting fees. You know, from your experience, some of the major parks don't have anybody at the gate when you come in because they have too many other things to do. The money doesn't stay there and assist them in doing what they have to do in the park anyway. I would be supportive of something like that.

Mr. WHALEN. Yes.

Senator WALLOP. How much revenue do you suppose would be anticipated from the rental income?

Mr. WHALEN. I would say that we could expect, Mr. Chairman, about to be able to charge somewhere in the neighborhood of $2.50 to $3.00 a head to get into the park. From that you could generate a million dollars easily, Mr. Chairman.

Senator WALLOP. What about rental of space in the parks?

Mr. WHALEN. For the vessel itself, we are talking in terms of $125,000 a year. It is a modest sum, but it is a start.

Senator WALLOP. I assume that we could do that.

What would be necessary in the way of an immediate appropriation to provide a sort of rescue basis so that the other funds that you anticipate might come from rental and visitor fees and other things?

Mr. WHALEN. I am sure that you would want to have your staff carefully check this with the Park Service, but my recollection is that if we had about $5 million in as an immediate infusion of funds, this could take care of *Wapama*'s emergency problems and a

couple of the other wooden ship's emergency problems. We would be in a pretty good position, Mr. Chairman.

Senator WALLOP. Thank you very much, Mr. Whalen. We will certainly consider this legislation and your suggested amendments to it. We will see if we can't do something to bring the Maritime Museum up to a standard that at least doesn't have us preside over its decay and destruction.

The hearing is adjourned.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

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